

City of Yonkers – RFP 255 – Attachment B

FORM OF LEASE AGREEMENT

BETWEEN

CITY OF YONKERS

AND

[INSERT NAME OF DEVELOPER]

PLEASE RECORD AND RETURN TO:

City of Yonkers
Corporation Counsel
City Hall – 3rd Floor
Yonkers, N. Y. 10701

City of Yonkers, County of Westchester

70 Jackson Street, (Block 186, Lot 132)

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	3
ARTICLE II GRANT OF TERM.....	8
Section 2.1 Grant	8
Section 2.2 Term.....	8
Section 2.3 Title.....	8
Section 2.4 Quiet Enjoyment.....	9
Section 2.5 Possession.....	9
Section 2.6 "Net" Lease.....	9
ARTICLE III RENT	9
Section 3.1 Annual Rent.....	9
Section 3.2 General Provisions Regarding Payment of Annual Rent.	9
Subsection 3.2.1. Offset, Abatement or Deduction.....	9
Subsection 3.2.2. Form and Place of Payment.....	10
Subsection 3.2.3. Late Payment	10
Section 3.3 Additional Rent.....	10
ARTICLE IV CONSTRUCTION.....	10
Section 4.1 Construction of the Premises	10
Subsection 4.1.1. Future Applications.....	11
Subsection 4.1.2. Performance and Payment Bonds	11
Subsection 4.1.3. Signs.....	11
Subsection 4.1.4. Easements	11
Subsection 4.1.5. Legal Requirements	12
Subsection 4.1.6. Mechanic's Liens	12
Subsection 4.1.7. Modification of Construction Plans.....	12
Subsection 4.1.8. Progress Reports	13
Subsection 4.1.9. Unavoidable Delay	13
Section 4.2 Omitted.	14
Section 4.3 Omitted.	14
Section 4.4 Construction Coordination	14
Section 4.5 Alterations	14
Subsection 4.5.1. Submission of Notice and Plans	14
Subsection 4.5.2. Construction Standards; Permits.....	15
Subsection 4.5.3. Replacements	15
Subsection 4.5.4. Insurance, Liens	15
ARTICLE V USES AND RELATED COVENANTS	15
Section 5.1 Permitted Uses.....	15
Section 5.2 Other Requirements	15
Section 5.3 Compliance with Laws	16
Section 5.4 Maintenance.....	16
Section 5.5 Omitted	16
Section 5.6 Landscaped Areas.....	16
Section 5.7 The Company's Acknowledgment.....	16
ARTICLE VI IMPOSITIONS	17
Section 6.1 Utility Charges.....	17
Section 6.2 Taxes.....	17

Subsection 6.2.1.	Inclusions	17
Subsection 6.2.2.	Exclusions	17
Subsection 6.2.3.	Intentionally Omitted	17
Subsection 6.2.4.	Intentionally Omitted.....	Error! Bookmark not defined.
Subsection 6.2.5.	Tax Bills.....	Error! Bookmark not defined.
Subsection 6.2.6.	Contests.....	18
Section 6.3	Failure to Make Payments	18
ARTICLE VII LEASEHOLD MORTGAGES.....		18
Section 7.1	Mortgages of Leasehold Estate.....	18
Section 7.2	The City’s Notices of Default; Cure by Mortgagee	19
Subsection 7.2.1.	Cure by Mortgagee	19
Subsection 7.2.2.	Mortgagee’s Additional Opportunity to Cure.....	20
Subsection 7.2.3.	Completion of Construction.....	20
Section 7.3	Adjournment of Termination by the City	20
Section 7.4	Revocation of Termination Notice	21
Subsection 7.4.1.	Reinstatement of the Company	21
Subsection 7.4.2.	Effects of Cure or Failure to Cure	22
Section 7.5	Permitted Transferee.....	22
Subsection 7.5.1.	the City’s Approval.....	22
Subsection 7.5.2.	Applicability to Mortgagee.....	22
Section 7.6	Amendments of Lease	23
Section 7.7	New Lease	23
Section 7.8	Arbitration Proceedings	24
Section 7.9	Required Mortgage Provisions	24
Section 7.10	Lender Consortium	24
Section 7.11	Cooperation by the City.....	25
Section 7.12	No Merger of Lease in Fee	25
Section 7.13	Exclusion of Certain Conditions.....	25
Section 7.14	Effect of Transfer; Limitation of Liability	26
Section 7.15	Confirmatory Agreement.....	26
Section 7.16	Legal Proceedings between the City and the Company	27
Section 7.17	Notices	27
Section 7.18	Mortgagee Deemed to Have Agreed	27
Section 7.19	Parties Not Third Party Beneficiaries	27
Section 7.20	No Changes in Use or Improvements.....	27
Section 7.21	No Subordination.....	27
ARTICLE VIII INSURANCE.....		28
Section 8.1	Coverage.....	28
Section 8.2	Policies.....	28
Subsection 8.2.1.	General Requirements.....	28
Subsection 8.2.2.	Insureds	29
Subsection 8.2.3.	Payment of Loss.....	29
Subsection 8.2.4.	Renewal and Cancellation	29
Subsection 8.2.5.	Leasehold Mortgagee Insurance Provisions	29
ARTICLE IX DAMAGE OR DESTRUCTION.....		29
Section 9.1	Repair or Restoration.....	29

Section 9.2	Insurance Proceeds: Deficits or Excess	30
Section 9.3	The City Not Obligated; Mutual Release	30
ARTICLE X CONDEMNATION		30
Section 10.1	General.....	30
Section 10.2	Improvements	30
Section 10.3	Separate Awards by Court.....	31
Section 10.4	Single Award by Court.....	31
Subsection 10.4.1.	General.....	31
Subsection 10.4.2.	Total Taking.....	31
Subsection 10.4.3.	Partial Taking.....	31
Subsection 10.4.4.	Temporary Taking	32
Section 10.5	Condemnation Proceedings	32
Section 10.6	Notice of Condemnation.....	32
Section 10.7	Condemnation Settlement.....	33
ARTICLE XI ASSIGNMENT AND SUBLETTING		33
Section 11.1	Representations as to Redevelopment	33
Section 11.2	Sale, Transfer or Assignment of Lease.....	33
Subsection 11.2.1.	Prohibition	33
Subsection 11.2.2.	Conditions of the City’s Approval.....	34
Subsection 11.2.3.	Intentionally Omitted.....	36
Subsection 11.2.4.	Invalid Assignment	36
Section 11.3	Assignment by the City	36
Section 11.4	Subletting.....	36
Subsection 11.4.1.	Permitted Subletting	36
Subsection 11.4.2.	Permitted Further Subletting.....	37
Subsection 11.4.3.	Rights of Subtenants	37
Section 11.5	Continuing Requirement of Consent	37
ARTICLE XII OPTION TO PURCHASE		37
Section 12.1	Grant of Option.....	37
Section 12.2	Option Terms and Conditions.....	38
Section 12.3	Purchase Price.....	38
Subsection 12.3.1.	Determination of Price.....	38
Section 12.4	No Exercise of Option to Purchase Upon Default.....	38
Section 12.5	Deed; Costs.....	38
Section 12.6	Lease Remains in Effect	38
Section 12.7	Failure by the Company to Close	39
Section 12.8	Assignment of Option.....	39
Section 12.9	Continuing Covenants	39
Section 12.10.	Estoppel Certificates.....	39
ARTICLE XIII DEFAULTS BY THE COMPANY AND THE CITY’S REMEDIES		39
Section 13.1	Events of Default by the Company.....	39
Section 13.2	Remedies of the City	41
Section 13.3	Rights of Leasehold Mortgagees	43
Section 13.4	No Remedy Exclusive	43
Subsection 13.4.1.	Termination for Cause	43
Section 13.5	Agreement to Pay Attorneys Fees and Expenses	43

Section 13.6	Holding Over	43
Section 13.7	the City's Performance of the Company's Obligations	44
Section 13.8	Waiver	44
Section 13.9	Suits by the City	44
Section 13.10	No Waiver by the City	44
Section 13.11	Waivers by the Company.....	45
ARTICLE XIV DEFAULT BY THE CITY		45
Section 14.1	Events of Default by the City	45
Section 14.2	Remedies	46
Section 14.3	No Remedy Exclusive	46
Section 14.4	Intentionally omitted.....	46
Section 14.5	The Company's Performance of the City's Obligations.....	46
ARTICLE XV PRIORITY OF LEASEHOLD		46
ARTICLE XVI REPRESENTATIONS		47
Section 16.1	Representations of the Company	47
Section 16.2	Representations of the City.....	48
Section 16.3	Opinions of Counsel	48
Section 16.4	No Other Representations.....	48
ARTICLE XVII ARBITRATION		48
Section 17.1	Settlement by Arbitration	48
Section 17.2	Governing Rules	50
Section 17.3	Arbitrator's Decision	50
Section 17.4	Fees and Expenses	50
Section 17.5	No Revocation	51
ARTICLE XVIII TITLE TO IMPROVEMENTS; SURRENDER		51
Section 18.1	Title to Improvements	51
Section 18.2	Upon Purchase	51
Section 18.3	Upon Termination or Expiration	51
Subsection 18.3.1.	Surrender at End of Term	51
Subsection 18.3.2.	Assignments to the City	52
Subsection 18.3.3.	Written Confirmation.....	52
Subsection 18.3.4.	Personal Property	52
Subsection 18.3.5.	Survival	52
ARTICLE XIX LIMITATION OF LIABILITY		52
Section 19.1	Liability of the City	52
Section 19.2	Intentionally omitted.....	53
Section 19.3	Survival.....	53
ARTICLE XX INDEMNIFICATION		53
Section 20.1	Indemnification of the City and Others	53
Section 20.2	Not Affected by Status of Insurance.....	54
Section 20.3	Defense of Claims	54
Section 20.4	Survival.....	55
ARTICLE XXI RIGHTS OF THE CITY		55
ARTICLE XXII MISCELLANEOUS GENERAL PROVISIONS.....		55
Section 22.1	Rules of Interpretation	55
Section 22.2	Negation of Partnership	56

Section 22.3	Notices	56
Section 22.4	Fees and Commissions	56
Section 22.5	Waiver	57
Section 22.6	Estoppel Certificates.....	57
Section 22.7	Amendments	57
Section 22.8	Severability	57
Section 22.9	Memorandum.....	57
Section 22.10	Counterparts.....	58
Section 22.11	Binding Effect.....	58
Section 22.12	Joint and Several	58
Section 22.13	No Merger of Estates	58
Section 22.14	Date for Performance.....	58
Section 22.15	Intentionally Omitted.....	58
Section 22.16	Relation to LDA.....	58
Section 22.17	Gender, Etc	58
Section 22.18	No Third Party Beneficiaries	58
Section 22.19	Successors and Assigns	58
Section 22.20	Further Assurances	59
Section 22.21	Separability	59
Section 22.22	Entire Agreement.....	59
Section 22.23	Effectiveness	59
RECITALS:	66

AGREEMENT OF LEASE (the "Lease") dated as of _____, 201_ by and between the CITY OF YONKERS, a municipal corporation having its principal office at 40 South Broadway, Yonkers, New York ("City"), and _____ [insert name of Developer], a _____ having its offices at _____ ("Company").

W I T N E S S E T H:

WHEREAS, by Resolution No. __-201_ adopted by the City Council on _____, 201_, the Company was conditionally designated (i) as the developer of the Premises, and that negotiations for the terms and provisions with respect to the development of the Premises have been completed and have been approved by the City Council of the City of Yonkers, and (ii) as a qualified and eligible sponsor for redevelopment of the Premises, after due notice of the identity of the Company as the proposed exclusive developer of the Premises and of the Company's proposed use of the Premises; and

WHEREAS, pursuant to SEQRA (as defined in Article 1 hereof), the City by Resolution No. __-201_ adopted on _____, 201_ authorized the issuance of a negative declaration together with certain findings relating to the proposed Land Disposition Agreement (the "LDA") between the City and the Company; and

WHEREAS, pursuant to Resolution No. __-201_ adopted by the City Council on _____, 201_, the City approved the proposed LDA, and provided for, among other things, the execution and delivery of this Lease upon the satisfaction of certain conditions set forth in the LDA, and by the same resolution authorized the City to execute and deliver the LDA and this Lease; and

WHEREAS, pursuant to SEQRA, the City Council by Resolution No. __-201_ adopted on _____, 201_ authorized the issuance of a negative declaration as an involved agency together with certain findings relating to the proposed LDA; and

WHEREAS, the City and the Company have executed and delivered the LDA, dated as of _____, 201_; and

WHEREAS, the City has determined that the redevelopment of the Premises as contemplated in the LDA and this Lease, and the fulfillment generally of the terms of this Lease, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable Federal, State and local laws and requirements under which the Premises has been undertaken and is being assisted; and

WHEREAS, all conditions for the execution and delivery of this Lease have either been satisfied or waived in accordance with the LDA,

NOW THEREFORE, in consideration of the above premises, the mutual covenants contained in this Lease, and the payment of the rent as provided hereunder, the City and the Company agree as follows:

ARTICLE I

DEFINITIONS

When used in this Lease with an initial capital letter or letters, each of the following terms shall have the meaning given it below:

"Affiliate" or "Affiliates" means (a) in the case of any Person, a Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, or (b) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate. For purposes of this definition the phrase "member of the immediate family" includes a spouse; a brother or sister of the whole or half-blood of such individual or his spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing. For purposes of the foregoing definition, "control" (including "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the entity in question, whether through the ownership of voting securities, partnership interests, or by Agreement or otherwise.

"Annual Rent" shall have the meanings set forth in Section 3.1 of this Lease.

"Architect", with respect to the site plan, landscaping, exterior design and surfacing, roof treatment and general massing, pedestrian and vehicular circulation, building layout and urban design aspects of the Improvements, means _____, or other registered architect or architectural firm selected by the Company and approved by City to design such aspects of the Improvements. The term "Architect", with respect to the interior design of the Improvements and the uses therein, means _____, or other the registered architect or architectural firm selected by the Company and approved by the City to design the Improvements.

"City" means The City of Yonkers, New York, a municipal corporation.

"Closing Date" means the date on which the City shall convey fee title interest in the Premises to the Company, subject to the Company exercising its option to so purchase the Premises.

"Commencement Date" means the first day of the first full calendar month following the calendar month in which the Lease is fully executed and delivered by and between both parties hereto.

"Company" means _____, a _____ organized under the laws of _____, having an office at _____, or any entity formed by them for the purposes contained in the LDA or this Lease. Whenever the Company is referred to herein, it shall also mean any successors, heirs or assigns of the Company or the interests of the Company in the Premises and this Lease.

"Condemnation Award" means the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, with any interest on such amount, including consequential damages to any portion of the Premises not taken, net of any unreimbursed costs and expenses of collecting the same.

"Construction Agreements" means the construction agreements, or contracts, together with all amendments, modifications and supplements thereof, for the construction of the Premises, including, without limitation, general agreements or contracts for, project management, construction management, and architect services and any subcontractors.

"Construction Plans" means the plans and specifications for the Premises as listed in Exhibit "C" attached to this Lease.

"Contractor" means any party (other than the Company) to a Construction Agreement.

"Date of Taking" means the date as of which the Company is deprived of possession of any property involved in a Taking.

"Default Rate" means the rate of interest which is three percent (3%) over the rate of interest, averaged on a monthly basis, charged from time to time for commercial loans to most-preferred customers by Chase Bank (or any successor thereto). The Default Rate shall be computed separately for each month, or any part thereof, during which any amount upon which interest is to be charged hereunder remains unpaid hereunder.

"DEC" means the New York State Department of Environmental Conservation.

"Equipment" means all fixtures and equipment, apparatus, appliances, appurtenances, devices, furniture, furnishings, machinery and other articles of personal property of every kind and nature whatsoever incorporated in, or which are attached or appurtenant to, the Premises and/or the Improvements, and/or any parts of either, for the use, operation maintenance or repair of plant and facilities, or which are acquired for any of the foregoing purposes, together with all additions thereto, replacements thereof and substitutions therefor, and shall include, without limitation, all machinery, dynamos, boilers, heating and lighting equipment, pipes, pumps, grounds, road, beach and other maintenance equipment, tanks, motors, air conditioning compressors, conduits, fittings, ventilating and communications apparatus, built-in furniture and cabinetry, elevators, escalators, incinerators, garbage compactors, antennas, computers, sensors, plumbing, heating, lighting and cooking fixtures and units, radio and television aerials, fireplace mantles, laundry equipment, refrigerators, stoves and ranges, dishwashers and other kitchen appliances, door mirrors, Venetian blinds, shades, screens, awnings, storm windows, window boxes, storm doors, mail boxes weather vanes, flag poles, pumps, shrubbery and outdoor statuary. Notwithstanding anything contained herein to the contrary, any fixtures, equipment, apparatus, appliances, appurtenances, devices, furniture, furnishings, machinery or other articles of personal property of every kind and nature whatsoever which are owned by the Company's subtenants, contractors, architects, engineers, project and/or construction managers or vendors or managing agents shall not be deemed to be "Equipment" for any purpose under this Lease.

"Event of Default" has the meaning provided in Section 13.1 hereof with respect to the Company and in Section 14.1 hereof with respect to the City.

"Final Completion" with respect to each element of the Improvements (other than Company leasehold improvements and finish work), means that all "punch list" items identified at Substantial Completion have been fully completed and the Architect for such component has determined that all work has been completed in full compliance with the Plans for such component.

"Financing Commitment" means a commitment or commitments which has or have been accepted by the Company from one or more equity investors or Institutional Lenders, to finance the construction of the Premises.

"Financing Entity" shall mean and refer to Institutional Lender(s), or to investors admitted in compliance with any applicable requirements for Article XI of this Lease.

"Governmental Agency(ies)" means all federal, state, county, municipal and other governments and all subdivisions, agencies, authorities, departments, courts, commissions, boards, bureaus and instrumentalities of any of them having jurisdiction of the City, the Company and the Premises, or any of them.

"Governmental Approvals" means the permits, approvals, consents, determinations, findings and other actions of Governmental Agencies.

"Hazardous Substance" means any hazardous, dangerous, toxic or restricted material, waste, product or substance which is defined or identified as such in any Federal, State or local laws, rules, regulations, policies or guidelines, and also includes asbestos and any petroleum products, industrial waste or other chemical contamination.

"Impositions" means the taxes, utility charges and other costs to be paid by the Company pursuant to Article VI.

"Improvements" means any and all buildings, structures, utility installations, paving, landscaping and other improvements now or hereafter located on the Premises, and all fixtures and non-movable equipment thereon, and any subsequent alterations, additions or replacements to or of any of the foregoing, made in connection with the Company's development and construction of the Premises consisting of an approximately _____ square foot structure, containing approximately: (a) _____ live/work units with access on _____ and _____, (b) _____ to _____ square feet of commercial retail space fronting on _____ and _____; (c) approximately _____ parking spaces; (d) structural, elevator, mechanical and utility work necessary to serve such improvements; and (e) public sidewalk improvements contiguous to the Premises. Improvements also means certain [**road widening**{add if applicable}] and sidewalk improvements in the Premises which shall be dedicated to the City, as more particularly described by metes and bounds in Schedule B attached hereto and made a part hereof (the "Dedicated Improvements").

"Institutional Lender" means (a) a savings bank, a savings and loan association, a commercial bank, trust company, an insurance company (whether acting individually or in a fiduciary capacity) G.E. Capital, GMAC, Ford Motor Corp. or comparable credit corporation organized and existing under the laws of the United States or any State, (b) a religious, educational or eleemosynary institution, an employee's welfare, benefit, pension or retirement

fund, (c) a real estate investment trust, or investment bank, any other Governmental or quasi-Governmental Agency or entity, (d) established hedge fund having experience in financing construction projects of similar size and scope as the Improvements, or (e) any combination of two or more of the foregoing types of entities, provided, that in order to qualify as an Institutional Lender for the purposes of this Agreement, the entity (1) must be subject, or submit itself, to the jurisdiction of the courts of New York State in any actions arising out of this Agreement, and (2) respecting only those entities set forth in clause (a) above, are subject to the supervision of the Comptroller of the Currency of the United States or the Insurance Department or Banking Department of the State of New York.

"Insurance Proceeds" means the proceeds obtained under any insurance policy the Company is required or permitted to maintain under this Lease, net of the unreimbursed costs and expenses incurred in the collection of such proceeds.

"Lead Lender" means an Institutional Lender that participates in a Leasehold Mortgage Financing, as permitted hereunder, in an amount which is not less than 80% of the total development costs for the Premises.

"Lease", "the Lease" or "this Lease" or "this Agreement of Lease" means this Agreement of Lease and all exhibits hereto and all amendments, modifications and supplements hereof.

"Leasehold" or "Leasehold Estate" means the estate for years and other interests in the Premises conveyed to the Company by this Lease.

"Leasehold Mortgage" shall mean each mortgage which under the terms of this Lease constitutes a lien on this Lease, the Company's Leasehold Estate in the Premises, and/or the Company's interest in the Improvements and/or the Equipment, or any refinancing thereof permitted under the terms of this Lease. In the event there shall exist at any point in time more than one Leasehold Mortgage, all such Leasehold Mortgages may sometimes hereinafter be collectively referred to as the "Leasehold Mortgage".

"Leasehold Mortgagee" shall mean the holder, or collectively, the holders, of a Leasehold Mortgage. In the event there shall exist at any point in time more than one Leasehold Mortgage, the holders of such Leasehold Mortgages may sometimes hereinafter be collectively referred to as the "Leasehold Mortgagee".

"Lease Year" means a period of twelve (12) consecutive calendar months commencing as provided in Section 2.2.1 of this Lease.

"Partial Taking" means a Taking that is not a Total Taking or a Temporary Taking.

"Permitted Title Exceptions" means the matters described as such in Exhibit A hereof.

"Person" means an individual, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, estate, trust or unincorporated association, any Federal, State, County or municipal government or any bureau, department, public corporation or agency thereof, any political subdivision, any fiduciary acting in such capacity on behalf of any of the foregoing, or any other legal or business entity.

"Premises" means the real property described on Exhibit A hereto, together with the Improvements and the Equipment.

"Preliminary Development Plans" is referred to in Section 4.17 hereof, and consist of the drawings, specifications and construction schedules described in Section 5.2 of the LDA and as listed and referred to in Exhibit C to the LDA.

"Rent" means the rent described in Article III, including Annual Rent and any other payment of money that the Company is obligated to make under this Lease, whether payable to the City or to any other Person.

"Requirements of Governmental Agencies" means any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Agencies applicable to the Premises and the construction, use and occupancy thereof, and shall include, without limitation of the foregoing, the Preliminary Development Plans and the Urban Renewal Plan.

"SEQRA" means Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law of the State of New York, and the implementing regulations set forth in 6 NYCRR Part 617.

"Substantial Completion" or "Substantially Complete", with respect to any Improvement to be constructed as contemplated in this Agreement, means that the Department of Housing and Buildings of the City (the "Buildings Department") has issued a temporary certificate of occupancy or temporary certificate of completion therefore and a "punch list" of the work necessary to achieve Final Completion has been created by the Architect and accepted by the Buildings Department. In general, any remaining work shall be such as will not materially interfere with the proposed use of such component and can be accomplished in no more than one hundred twenty (120) consecutive days following Substantial Completion of such component.

"Taking" means any taking or damaging of all or any part of, interest in, or right appurtenant to the Premises by any Governmental Agency, or deed in lieu of any such taking, as a result of or in lieu of or in anticipation of or under threat of the power of condemnation or eminent domain, including severance damage and any change in grade.

"Taxes" shall have the meaning set forth in Section 6.2 of this Lease.

"Temporary Taking" means a temporary Taking that does not extend beyond the Term of this Lease, so that the City's fee title interest hereunder is unaffected by such Taking.

"Term" shall have the meaning set forth in Section 2.2 of this Lease.

"Total Taking" means a Taking, whether permanent or temporary, the effect of which is that the portion or portions of the Premises remaining cannot, despite the use of condemnation proceeds available for repair or restoration, be practically and economically used or converted for use by the Company for the uses of the Premises, and of the Improvements, permitted in this Lease.

"Unavoidable Delay" or "Unavoidable Delays" means delays incurred by the City, a Contractor, the Company or any Affiliate of the Company (as the case may be, the "Delayed Party") due to strikes, lockouts, work stoppages, labor jurisdictional disputes, orders by Governmental Agencies that affect the progress of any work or process hereunder by more than 30 days, court injunctions or other court orders, acts of God, inability to obtain labor or materials, governmental preemptions or restrictions, enemy action, riot or other civil commotion, fire, casualty or other causes beyond the reasonable control of the Delayed Party, or if the Delayed Party is the Company, or an Affiliate of the Company, the breach, default or delay by the City in the payment or performance of its obligations under this Agreement or any agreement referred to in this Lease; in each case provided the Delayed Party shall have notified the other party to this Lease not later than thirty (30) days after the Delayed Party knows or should have known of the occurrence of same and if such notice is given after the expiration of such thirty (30) day period, then the period of Unavoidable Delay shall not be deemed to have commenced until the Delayed Party shall have notified the other party of the occurrence of same.

"Zoning Ordinance" means the Zoning Ordinance of the City of Yonkers.

ARTICLE II

GRANT OF TERM

Section 2.1 **Grant.** For and in consideration of the payment of Annual Rent and the mutual covenants and agreements contained in this Lease, the City hereby grants and leases the Premises to the Company, and the Company hereby takes and leases the Premises from the City, on the terms and conditions set forth in this Lease.

Section 2.2 **Term.** The term (the "Term") of this Lease shall commence on the Commencement Date and shall end (TBD). The first Lease Year during the Term shall commence on the Commencement Date, and shall end on the last day of the twelfth (12th) full calendar month following the calendar month in which the Commencement Date occurs. The second (2nd) Lease Year shall commence on the first (1st) day following the expiration of the first Lease Year, and each subsequent Lease Year during the Term shall commence on the anniversary of such first (1st) day of the second (2nd) Lease Year.

Section 2.3 **Title.** The Company has engaged a title company to obtain title insurance under an ALTA Leasehold Loan Policy or an ALTA loan Policy with a CLTA 107.5 endorsement (the "Title Company") which (a) reflects the status of the fee interest of the Premises as well as the Company's interest and the Company's option to purchase the fee interest in the Premises and (b) insures that this Lease is not subordinate to any lien or encumbrance (other than the Leasehold Mortgage, and the subordinated City Mortgage as such mortgage is defined in Article XII hereof) and other requirements as specified by the Leasehold Mortgagee, and such status of title has been accepted by the Company, subject to the Permitted Title Exceptions, and the Company hereby represents and warrants that such title is hereby accepted by the Company, subject to the Permitted Title Exceptions.

Section 2.4 Quiet Enjoyment. Subject to the Permitted Title Exceptions and the terms and provisions of this Lease, the Company shall have and enjoy throughout the Term the quiet, peaceful, exclusive and undisturbed possession of the Premises, without hindrance, ejection or molestation by any Person.

Section 2.5 Possession. The City shall deliver actual possession of the Premises under this Lease to the Company on the Commencement Date.

Section 2.6 "Net" Lease. This Lease shall be a completely net lease and the Rent and all other sums payable hereunder by the Company shall be paid without notice or demand, and without setoff, counterclaim, recoupment, abatement, diminution, deduction, reduction or defense, except as otherwise specifically set forth herein or in the LDA. The City shall not be required to make any payment or provide any credit against Rent, of any kind whatsoever, with respect to the Premises, the Improvements or the Leasehold except as otherwise specifically set forth herein or in the LDA. The Company shall be responsible for all maintenance and repairs of the Premises and operating expenses, including but not limited to real estate taxes, water, gas, electric and sewer charges and utilities; and any other state, county or municipal charges, and any special assessments.

ARTICLE III

RENT

Section 3.1 Annual Rent.

(1) From the Commencement Date and continuing through to the date the City conveys title to the Company, subject to the Company exercising its option to purchase the Premises during the Option Period (as herein defined), the Company shall pay Annual Rent for each Lease Year (the "Annual Rent") in the amount of \$_____, payable in advance in equal quarterly installments in the amount of \$_____ commencing on the first day of the first quarter of the First Lease Year, and thereafter on the first day of each subsequent quarter during such Lease Year. The first two years of Annual Rent paid by the Company shall be credited toward the Purchase Price to be paid by the Company, if the Company exercises its option to purchase the Premises during the Option Period (as such terms are defined in Article XII hereof).

(2) Premises. Thereafter, the Annual Rent shall continue to be increased by \$_____.

Section 3.2 General Provisions Regarding Payment of Annual Rent.

Subsection 3.2.1. Offset, Abatement or Deduction. The Company shall pay all Annual Rent to the City without notice and free of any offset, abatement or other deduction whatsoever, except as expressly provided in this Lease.

Subsection 3.2.2. Form and Place of Payment. All Rent shall be paid in the lawful money of the United States of America to the City at the City's address for notices or to such other Person or address as may have been identified in a notice given by the City to the Company.

Subsection 3.2.3. Late Payment. If any payment of Annual Rent is not made within ten (10) days after the date due and payable under this Lease (the "due date"), then such payment shall bear interest from the due date until paid at the lesser rate of the Default Rate or the highest rate permitted under the Requirements of Governmental Agencies (the "Default Rate"). This interest shall be due on late payments without any notice and regardless of whether or not an Event of Default ever occurs with respect to such late payment.

Section 3.3 Additional Rent. In addition to Annual Rent, the Company shall pay, as additional rent, without demand, abatement, offset or deduction (except as expressly provided to the contrary herein), when due and payable as provided in this Lease, all sums, charges and expenses, however characterized, that the Company is obligated to pay, to the City or to any third party, pursuant to any of the provisions of this Lease, including, without limitation, Impositions, insurance premiums and late charges ("Additional Rent"). Any payment made by the Company to the City, regardless of how such payment is characterized, shall be applied first to the reduction of any interest then due and payable to the City hereunder, then to the payment of any other Additional Rent then due and payable hereunder, and then to the payment of any Annual Rent payable hereunder. In the event of any failure on the part of the Company to pay any Additional Rent, the City shall have all the rights and remedies provided for in this Lease or at law or in equity or otherwise (except as such legal or equitable remedies may be modified by the terms of this Lease) to enforce the collection of such Additional Rent.

ARTICLE IV

CONSTRUCTION

Section 4.1 Construction of the Premises.

(a) All building permits for the footing and foundation plans shall be obtained within thirty days of the execution and delivery of this Lease, and complete Construction Plans approved by the City shall be submitted to the Building Department together with its building permit application within thirty days of the execution and delivery of this Lease.

The construction of the Improvements shall commence within thirty (30) days' of the issuance of building permits by the Department of Housing and Buildings, and shall be prosecuted with all reasonable diligence and without interruption subject to Unavoidable Delays. The Improvements shall be Substantially Completed in a good and workmanlike manner in accordance with the Construction Plans, the Requirements of Governmental Agencies, the LDA and this Lease, subject to Unavoidable Delays, no later than twenty-one (21) months after the Commencement Date (the "Substantial Completion Date"); provided that in the event of any extension(s) hereunder of the time for Substantial Completion of the Improvements, by reason of one or more events of Unavoidable Delay, the period of extension (considered cumulatively and

in the aggregate for all such events of Unavoidable Delay), shall not exceed twelve (12) months. Except as otherwise provided in this Lease, the cost of construction of the Premises shall be at the sole expense of the Company.

(b) Upon request, following issuance of a Temporary Certificate of Occupancy for any part or element of the Improvements, and upon the City's determination that the standard and requirements for construction of the Premises have been satisfied, which determination shall not be unreasonably withheld or delayed, the City shall provide a formal Certificate of Completion, duly executed and acknowledged in proper form for recordation in the Westchester County Clerk's Office, Land Records Division, confirming compliance with all completion requirements set forth in this Article and/or in the LDA, with respect to the Improvements.

Subsection 4.1.1. Future Applications. The Company shall apply for any permits or licenses necessary for the operation of the Premises as soon as such applications can appropriately be made. The City agrees upon request to join in the signing of any applications for such licenses and permits, not heretofore obtained, as may be required for the development, construction, and operation of the Improvements, and the uses contemplated by this Lease, including applications for licenses and permits where the signature of the City is required by applicable laws in force at the time, or as may be reasonably desired. This obligation shall not be deemed to limit the City's right to review and approve applications in their exercise as Governmental Agencies, which shall not be unreasonably withheld. The cost of obtaining any licenses and permits for which the Company is responsible shall be borne by the Company.

Subsection 4.1.2. Performance and Payment Bonds. Throughout the entire period of construction of the Premises, the Company shall cause to be maintained in full force and effect payment and performance bonds and/or other security representing an amount equal to the greater of (i) the hard costs of the development of the Premises or (ii) the performance and payment security requirements of the Leasehold Mortgagee. Provided however, if the Leasehold Mortgagee requires personal guarantees of any party related to or affiliated with the Company in lieu of payment and performance bonds, then the Company shall provide the City with original guaranty agreements addressed to the City from the aforesaid individuals for completion of construction in the same form and in the same amounts as provided to the Leasehold Mortgagee.

Subsection 4.1.3. Signs. Any identification signs for the Premises or any part thereof to be installed and maintained by the Company, that are visible from outside of the Improvements shall be subject to the City's prior, reasonable, written approval as to design, size, color, illumination, height, and location. At the Company's request, the City shall join in or consent to any application for sign permits for approved signs in conformance with any applicable ordinance of the City under which the City's consent may be necessary. The provisions of this subsection shall continue to be applicable after completion of the Improvements, throughout the Term of this Lease.

Subsection 4.1.4. Easements. The City shall grant easements and other interests and, if necessary, modifying or abandoning such rights-of-way, as may be required to provide the Premises with electric, telephone, gas, water, sewer and other public utilities useful or necessary to the proper construction, economic development and operation of the

Improvements over and across property now owned by the City, at such locations the Company may request, subject to the City's approval, not to be unreasonably withheld.

Subsection 4.1.5. Legal Requirements. The Company shall comply with all Requirements of Governmental Agencies applicable to the construction, alteration, maintenance and repair of the Improvements and all parts thereof.

Subsection 4.1.6. Mechanic's Liens.

(a) The Company shall not permit or consent to the filing or to the continuation after filing, of any mechanics' liens or other similar liens against the Improvements.

(b) The Company shall pay all costs incurred in connection with the construction, alteration, maintenance, operation and repair of the Premises. If a lien or claim of lien is filed against all or any part of or interest in the Premises by any contractor, subcontractor, mechanic, laborer, materialman or any other Person whomsoever, other than arising from any act or action of the City, its agents, employees or independent contractors, then the Company shall, within sixty (60) days after notice of such lien or claim of lien, cause the same to be discharged of record; provided, however, that the Company shall have the right to contest the amount or validity of any such lien or claim of lien by appropriate proceedings, but in such event, the Company shall promptly and fully bond such lien by a statutory bond to discharge such lien with a responsible surety company to prevent foreclosure against the Premises under such lien or claim of lien. The Company shall prosecute such proceedings with due diligence and dispatch. The Company shall also defend for the City, at the Company's expense, any action, suit or proceeding which may be brought on or for the enforcement of any such lien and shall pay damages and satisfy and discharge any judgment entered in such action, suit or proceeding and save the City harmless from any liability, claim or damages resulting therefrom.

Subsection 4.1.7. Modification of Construction Plans.

(a) No changes to the approved Preliminary Development Plan or, the Construction Plans or the Construction Agreements affecting the elevations of the structures, the footprint of the structures, exterior materials, fenestration, unit mix or density of the structures shall be made without the written approval of the City ("Modifications"). If the Company wishes to make Modifications to the approved Plans, or to change the Construction Agreements in connection with the Modifications ("Change Orders"), the Company shall submit the proposed Modifications and/or Change Orders to the City for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the approved Preliminary Development Plan, the Construction Plans or Construction Agreements. If the City determines, in its reasonable judgment, that the proposed Modifications conform to the requirements of the LDA and this Lease, and are substantially consistent with the approved Preliminary Development Plan, the Construction Plans or the Construction Agreements, the City shall so notify the Company, and the plans and agreements for which such Modifications or Change Orders were submitted shall be deemed to incorporate the modifications that have been approved by the City, and the Company's obligations under the LDA and this Lease shall be performed in accordance with such plans as so modified. If the City determines, in its reasonable judgment, that the proposed Modifications or Change Orders are not acceptable, the City shall so

notify the Company, specifying in reasonable detail in what respects they are not acceptable, and the Company shall either (i) withdraw the proposed Modifications or Change Orders, in which case, construction of the Improvements shall proceed on the basis of the Construction Plans or Construction Agreements previously approved by the City, or (ii) revise the proposed Modifications or Change Orders in response to the City's objections, and resubmit such Modifications or Change Orders to the City for review and approval within thirty (30) days after such notification from the City. Each review by the City under this subsection shall be carried out within ten (10) business days following the date of submission of the proposed change.

(b) The provisions of this section relating to approval, rejection, and resubmission shall continue to apply until the plans and specifications and the proposed modification therein set forth have been approved by the City, provided, however, that a third rejection by the City, acting reasonably, shall be final, and the Company shall not be entitled to make any further submission of plans and specifications with respect to the proposed modification.

(c) Notwithstanding anything stated or implied herein to the contrary, the City and the Company specifically agree, and the Company specifically acknowledges, that the City's approval in whole or in part, of any plans and specifications and the modification of the Construction Plans shall be deemed to have been given by the City acting only in its proprietary capacity as owner of the Premises for purposes of this Lease, it being the intention of the City that the Company shall, to the extent that it has the responsibility to do so as set forth in the LDA, obtain all permits and approvals from the various departments, agencies, bureaus, officers and officials of the City and other Governmental Agencies as may be required for the development of the Premises in accordance with normal municipal procedures applicable to construction in the City.

Subsection 4.1.8. Progress Reports. Commencing with the last business day of the fourth (4th) calendar month after the Commencement Date, and on the last business day of every third calendar month thereafter until Substantial Completion, the Company shall cause a written report on the status of the development, construction and marketing activities for the Premises to be submitted to the City for the preceding three (3) month period (or in the case of the first such report, during the period since the Commencement Date) and that which the Company intends to accomplish in such areas in the next ensuing three (3) month period. Such status reports shall include updates of the construction time schedule included in the approved Construction Plans as set forth in the LDA. The Company further agrees to obtain the Company's answers in writing to any reasonable questions the City may present in writing relating to the foregoing from time to time. The City and the Company may agree to limit the number and scope of items covered by the status reports as well as the frequency thereof.

Subsection 4.1.9. Unavoidable Delay. Notwithstanding anything herein to the contrary, the parties shall have the right from time to time to extend the periods set forth above in this Section 4.1 within which construction of the Improvements is to be undertaken and completed if and to the extent the progress of such construction is affected by Unavoidable Delays, provided that (a) the Delayed Party shall give written notice to the other parties, as more particularly set forth in the definition for Unavoidable Delay in Article 1 hereof, promptly following the occurrence of each such Unavoidable Delay, the extent to which the same is

expected to delay progress of any particular items or approvals of construction and the additional period of time (over and above the date specified above for completion of the Improvements) which the Delayed Party reasonably anticipates will be required by reason of such Unavoidable Delay to complete the Improvements or the approvals in connection therewith, and (b) the Delayed Party shall use reasonable efforts to resolve such Unavoidable Delay and make up the time lost as a result thereof.

Section 4.2 **Omitted.**

Section 4.3 **Omitted.**

Section 4.4 **Construction Coordination.** The City and the Company agree to cooperate and confer with one another, and to cause their respective architects, project managers, construction managers, contractors and consultants (collectively, "representatives") to do so, in order to facilitate the coordination of the parties' respective construction obligations, in order to permit the parties to carry out their joint obligations hereunder as economically and expeditiously as reasonably possible. Each of the parties to this Lease and the LDA will cause its representatives to attend construction progress and coordination meetings convened by the City.

Section 4.5 **Alterations.** From and after Final Completion of the Premises, the Company shall not demolish, replace, materially change or alter the Premises, or any part thereof, or make any addition thereto (each of which, including any damage restoration to be made pursuant to this Lease, is sometimes hereinafter referred to as an "Alteration"), other than repairs and damage restoration which the Company is obligated to make hereunder, without the City's prior written consent in each instance, provided, that no consent, approval or authorization shall be required if such Alteration will not (i) materially affect the exterior appearance of the Premises, and the cost of such Alteration (or the aggregate cost of a series of Alterations to be performed at substantially the same time) will not exceed \$50,000; or (ii) involve a deviation from the provisions of Section 5.1 hereof, including without limitation a deviation beyond the range of variation permitted in such Section 5.1, or (iii) involve noncompliance with any Requirements of Governmental Agencies. The costs of performing any Alteration shall be paid and borne the Company. If the City's consent is required for a proposed Alteration, it shall not be unreasonably withheld or delayed provided that prior to the commencement of the proposed Alteration, the proposed Alteration complies with all of the applicable requirements set forth in this Lease. If the City refuses consent to any proposed Alteration for which the City's approval is required hereunder, the dispute may be submitted to arbitration pursuant to Article XVII of this Lease.

Subsection 4.5.1. **Submission of Notice and Plans.** The Company shall not permit any Alterations unless the Company delivers to the City a written notice describing any proposed Alteration accompanied by a complete set of detailed plans and specifications for the Alteration at a level of detail comparable to the Construction Plans, including a detailed timetable for the construction of such Alteration, an estimate of the cost of construction, and all other drawings, specifications and written explanations that the City may reasonably request. The proposed Alteration shall be deemed approved unless rejection in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be made within twenty (20)

days after their receipt by the City. If the City's approval is required, such submission shall constitute a necessary part of the request for the City's approval. If the City's approval is not required, the submission required by this subsection shall nevertheless be made, prior to commencement of the Alteration, for the City's information only.

Subsection 4.5.2. Construction Standards; Permits. Any approved Alteration shall be made promptly (subject to Unavoidable Delay) and in a first class, good and workmanlike manner and in accordance with the plans and specifications therefor, and all permits and other Requirements of Governmental Agencies. Before performing any construction work on an Alteration, the Company shall, at its sole cost and expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and upon completion shall obtain certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to the City.

Subsection 4.5.3. Replacements. Nothing set forth above in this Section 4.5 shall be deemed to prevent the Company from removing equipment installed by the Company, for the purpose of replacing the same with equipment of like quality. Replacements of equipment or materials with equipment or materials of like kind or quality shall not be subject to the City's prior approval hereunder, except that prior to commencing any such replacement the Company shall comply with the submission requirements of Subsection 4.5.1 above in order to obtain the City's prior concurrence that the replacement materials are of like quality, and, if visible from the exterior of the Improvements, are of substantially similar appearance. The City shall be deemed to have so concurred unless objection thereto in writing is made by the City within twenty (20) days after receipt by the City.

Subsection 4.5.4. Insurance, Liens. The provisions of Section 4.1 above pertaining to liens and the removal thereof, and the provisions of this Lease pertaining to insurance and evidence thereof to be provided by the Company in connection with the construction of the Improvements, shall apply also to any Alteration, and evidence of the required insurance reasonably satisfactory to the City shall be delivered to the City prior to the commencement of any Alteration.

ARTICLE V

USES AND RELATED COVENANTS

Section 5.1 Permitted Uses. Throughout the Term, the Company shall not use or allow the use of the Premises for any purpose other than the development, construction and operation of the Premises as a structure containing (TBD).

Section 5.2 Other Requirements. Nothing contained in this Article V shall be deemed to relieve the Company from compliance with any requirements or restrictions of the Zoning Ordinance or of the Preliminary Development Plan or any other Governmental Approvals, or any requirements or restrictions set forth in the zoning variances, special use exception permit, site plan approval and related environmental findings made pursuant to the SEQRA, with respect to the redevelopment or use of the Premises.

Section 5.3 Compliance with Laws. The Company shall obey, perform and comply with any and all Requirements of Governmental Agencies existing at any time during the Term in any way affecting the Premises, or the use or condition of the Premises, including the construction, operation, alteration or demolition of the Improvements or in any other way affecting this Lease. The Company shall have the right to contest in good faith the validity of any such Requirements of Governmental Agencies by appropriate legal proceedings, unless such proceedings shall operate to cause the sale of the Premises or any part thereof, or the placing of any lien thereon or the imposition of fines or other civil or criminal liability prior to the final determination of such proceedings. The Company, at its own expense, shall obtain any and all licenses and permits necessary for its use of the Premises. The City shall join in the applications for any such licenses and permits and otherwise cooperate as necessary to comply with the Requirements of Governmental Agencies where the signature of the City as owner of the Premises is required.

Section 5.4 Maintenance. The Company shall maintain the Premises in good, sound and safe condition and repair and sightly in appearance. Necessary repairs, maintenance and upkeep will be performed so as to preserve the attractive appearance, the physical integrity and the sanitary and safe condition of the buildings. The City shall not have any responsibility for the maintenance or repair of the Premises. If the Company fails to commence to cure a default in such repairs, maintenance and upkeep within thirty (30) days after receiving written notice from the City specifying what repairs, maintenance and upkeep must be carried out, the Company agrees, that the necessary repairs, maintenance and upkeep may be performed by the City at the expense of the Company, from time to time, in keeping with this covenant. Notwithstanding the foregoing, if the nature of the repairs, maintenance and upkeep is such that it cannot be completed within a thirty (30) day period, the Company shall have a reasonable period of time, based upon commercially reasonable standards, in which to complete same.

Section 5.5 Omitted.

Section 5.6 Landscaped Areas. The Company shall cause the area, if any, of the Premises not occupied by structures, vehicular driveways or pedestrian walks, to be kept planted with grass, trees and plants or shrubbery and maintained in a healthy condition and neat appearance. Upon thirty days' prior written notice to cure, if there is a default in such planting or in its maintenance, the Company agrees, that the necessary planting and work may be done by the City at the expense of the Company, from time to time and in keeping with this covenant. Notwithstanding the foregoing, if the nature of the landscape work is such that it cannot be completed within a thirty (30) day period, the Company shall have a reasonable period of time, based upon commercially reasonable standards, in which to complete same.

Section 5.7 The Company's Acknowledgment. The Company acknowledges that the planning objectives of the City for the redevelopment of the Premises include the objective to promote commercial purposes in the City of Yonkers. The Company further acknowledges and agrees that, in accordance with such objectives, that the City has undertaken any obligation or commitment to the Company to provide, apply for, join in applying for, approve or consent to, or support any application by the Company for, any

governmental subsidies, grants or loans of any kind in connection with such commercial development.

ARTICLE VI

IMPOSITIONS

Section 6.1 Utility Charges. At all times during the Term, the Company shall pay or cause to be paid any and all charges for water, electricity, gas, sewage, waste, trash and garbage disposal, telephone and other utility services furnished to the Premises or the Improvements, it being agreed that charges for any of such services that are provided by the City of Yonkers or by any of its agencies or departments, or by any special district, shall be at normal rates prevailing within the City of Yonkers or the applicable service area.

Section 6.2 Taxes.

Subsection 6.2.1. Inclusions. The Company shall pay to the appropriate taxing authority all taxes, general and special assessments and other public charges of every description, including (subject to Subsection 6.2.2(b) below) any special assessments (collectively called the "Taxes"), that may be levied on or assessed against the Premises, any personal property located on the Premises, the Leasehold and any subleasehold estate created by any sublease, that are attributable to the Term. The Company and its subtenants shall pay the Taxes, or any installment of the Taxes if permitted to be paid in installments, on or before the day on which any interest or penalty is imposed upon such payment whether belonging to or chargeable against the City or the Company. In addition, if, at any time during the Term, the Premises are assessed and taxed by the appropriate taxing authority at a rate of less than One Hundred percent (100%) of their total value pursuant to any present or future provision of state law relating to the taxation of leaseholds, the Company shall pay to the City, subject to any exemption or abatement of real estate taxes to which the Company is expressly entitled under this Lease, an amount in lieu of real estate taxes equal to the difference between (i) the amount actually assessed by and payable to the appropriate taxing authority and (ii) the amount that would have been payable at full assessment, as and when such real estate taxes are due under applicable law, such payment to be made together with the monthly installment of Annual Rent next falling due hereunder.

Subsection 6.2.2. Exclusions. The Company shall not be required to pay and the term "Taxes" shall not include any income, estate, gift, inheritance, transfer capital levy tax, or franchise or profits tax that may be payable by the City. However, if taxes are expressly imposed on the Rent in lieu of all or part of the Taxes on the Premises, and the purpose of the new tax is more closely akin to that of an ad valorem tax or use tax than to an income or franchise tax on the City's income, then the Company shall pay such substitute taxes as part of the Taxes payable under this Lease.

Subsection 6.2.3. Omitted.

Subsection 6.2.4. The City shall deliver to the Company all tax bills at least thirty (30) days before the due date of any installment, unless such bills are delivered directly to the Company by the appropriate authorities. Upon receipt of a notice from the City requesting same, the Company shall deliver to the City receipts indicating payment, the certification of the Company's controller, or other satisfactory proof of payment of any taxes required theretofore to have been paid as provided in this Section 6.2.

Subsection 6.2.5. Contests. The Company may contest any assessment or the imposition of any Tax against the Premises by appropriate legal proceedings, unless such proceedings shall operate to cause the sale of the Premises or any part thereof, the sale or foreclosure of any lien thereon or the imposition of fines or other civil or criminal liability prior to the final determination of such proceedings. All parties agree to execute appeals, petitions, suit papers and other documents legally necessary in connection with any such contest and to cooperate reasonably in such proceedings, all upon the Company's request, provided, the Company fully indemnifies the City for its participation and pays all reasonable costs and expenses of the City associated with such proceedings. During any such contest, the Company shall take all steps legally necessary, including payments under protest, to prevent foreclosure and public sale or other divesting of the City's title by reason of nonpayment of Taxes. In any event, the Company shall pay all Taxes prior to the issuance of an execution for such payment.

Section 6.3 Failure to Make Payments. Subject to the notice provisions for Leasehold Mortgagees set forth in Article VII of this Lease, if the Company fail to pay as and when due any Impositions, insurance premiums on any policy required to be maintained by the Company under this Lease, or any other charges, costs or expenses required to be paid under this Lease, then the City shall have the right, but not the obligation, to make all such payments. The City shall have the option of requiring the Company to repay the City the amount of such payments on demand or treat the amount of such payments as Additional Rent to be paid on the next day for the payment of Rent. If the Company does not make such payment, then the City shall have the same rights and remedies with respect to such Additional Rent as the City has under this Lease, including but not limited to the provisions set forth in Section 13.1(b) of this Lease, for the nonpayment of Rent, including interest thereon. Payment of any such amounts by the City shall not be deemed a waiver of any of its rights under Article XIII of this Lease.

ARTICLE VII

LEASEHOLD MORTGAGES

Section 7.1 Mortgages of Leasehold Estate.

(a) The Company shall have the right, from time to time during the Term, to encumber its Leasehold Estate hereunder or under the Lease by granting to an Institutional Lender(s) one or more Mortgages covering the estate and rights of the Company in this Lease or, in the Improvements and the Equipment, and the City shall execute such financing documents relating to each Leasehold Mortgage (the "Financing Documents") to the extent the documents require that the City execute Financing Documents relating to each Leasehold Mortgage, as long as the Financing Documents are consistent with the terms of this Article VII, and provided that the Financing Documents shall not impose any economic or financial liability, risk or exposure to the City or its fee title interest in the Premises. Any Leasehold Mortgage as described above shall be limited to the purpose of providing security to an Institutional Lender for loan financing to be used or applied only in connection with the development and construction of the Improvements on the Premises including without limitation, loan fees, construction costs, interest, consultant expense, fees and other soft costs paid to third parties in connection with construction of the Improvements and for no other purpose or property. In the event of any inconsistency relating to the rights of Leasehold Mortgagees between the provisions of this Article VII and other provisions of this Lease, then the provisions of this Article VII shall control.

(b) The Company shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien covering the estate, interest or rights of the City in all or any part of the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the City's estate, interest or rights in the Premises or any part thereof.

Section 7.2 The City's Notices of Default; Cure by Mortgagee.

Subject to the provisions of Section 7.11 below, the City agrees to give to each Leasehold Mortgagee of which the Company shall have given the City notice as provided herein, at the address of such Leasehold Mortgagee as set forth in such notice, or at such other address as such Leasehold Mortgagee may subsequently designate in the manner provided in Article 22 of this Lease, a copy of each notice of default given by the City to the Company at the same time such notice of default shall be given to the Company, and no such notice of default shall be deemed to have been duly given to the Company unless and until a copy thereof shall have been so given to such Leasehold Mortgagee.

Subsection 7.2.1. Cure by Mortgagee. After a notice of Default shall have been given to the Company, each Leasehold Mortgagee shall, in the first instance, have the same time periods for cure and the same rights to cure, but not the obligation to cure, as are provided to the Company to remedy or cause to be remedied the default(s) which are the subject matter of such notice (it being understood that such period for cure shall run concurrently). The City agrees to accept performance by any Leasehold Mortgagee of any covenant, condition or agreement on the Company's part to be performed hereunder with the same force and effect as though performed by the Company, it being clearly understood and agreed, however, that the right of any Leasehold Mortgagee to cure is subordinate to the Company's primary right to cure any default or Event of Default. The Company authorizes any Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and the Leasehold Mortgagee is hereby authorized to enter on the Premises for such purpose. The City's giving of notice to each Leasehold Mortgagee under the provisions of this Subsection 7.2.1 shall not preclude the City

from giving any subsequent notice of default to the Company which is required or permitted to be given pursuant to Article XIII of this Lease, provided, however, that upon giving any subsequent notice of default to the Company, the City shall simultaneously provide a copy of such notice to each Leasehold Mortgagee, as set forth above.

Subsection 7.2.2. Mortgagee's Additional Opportunity to Cure. Upon the expiration of the cure period set forth in the City's Notice of Default, in the event a cure has not been effected, the City shall give a second Notice of Default to each Leasehold Mortgagee (the "Mortgagee Notice of Default") which shall set forth the nature of the default or Event of Default not cured and shall state the period which each Leasehold Mortgagee has to cure such default which period shall be the same period granted to the Company in the original Notice of Default (but shall be after the expiration of the Company's cure period referred to in subsection 7.2.1 above).

Subsection 7.2.3. Completion of Construction. Notwithstanding anything to the contrary set forth in this Article VII or in any other provision of this Lease, and in addition to and without limitation of any other requirements or conditions applicable to cure set forth in this Lease, if the breach or default that the Leasehold Mortgagee proposes to cure is with respect to the construction of the Premises, the Leasehold Mortgagee shall not have the right, either before or after foreclosure or action in lieu of foreclosure, to undertake or continue the construction or completion of the Premises (beyond the extent necessary to conserve or protect Improvements or construction already made) without first having expressly assumed the obligation to the City, by written agreement mutually satisfactory to the City and the Leasehold Mortgagee, to complete the Improvements in the manner provided in this Lease and in the LDA, within the revised time schedule set forth in such written agreement between the City and the Leasehold Mortgagee.

Section 7.3 Adjournment of Termination by the City. Anything contained in this Lease to the contrary notwithstanding, if an Event of Default shall occur, (and the Company and/or the Leasehold Mortgagee shall not have cured pursuant to Article XIII or Section 7.2 hereof, as the case may be), the City shall have no right to terminate this Lease unless, simultaneously with the City's delivery to the Company of the Termination Notice provided in Section 13.2 below, the City shall submit to each Leasehold Mortgagee who shall become entitled to notice as provided in Section 7.1 above, a separate notice of termination (the "Mortgagee Notice of Termination"), which notice shall contain a statement of all then existing Defaults and Events of Default and shall set forth as the date for the termination of this Lease (the "Termination Date") the Termination Date specified in Termination Notice delivered to the Company which shall be at least ninety (90) days after the date of the Mortgagee's Notice of Termination. Each Leasehold Mortgagee shall in such circumstance have the right, exercisable by notice to the City from any Leasehold Mortgagee prior to the Termination Date (the "Adjournment Notice"), to adjourn the Termination Date, provided that any such Leasehold Mortgagee shall, in such Adjournment Notice, agree that it will, promptly after the date of the Adjournment Notice (the "Initial Cure Period"):

(a) Cure all Defaults and Events of Default specified in such Mortgagee Notice of Termination (including, without limitation, all obligations to pay sums of money) to the extent they are capable of being cured by such Leasehold Mortgagee within the Initial Cure Period and

diligently pursue efforts to cure any other Default or Event of Default not capable of being cured within such Initial Cure Period;

(b) At such Leasehold Mortgagee's option, in good faith, acquire, or initiate and diligently pursue steps to acquire the Company's interest in this Lease, the Company's interest in the LDA and this Lease by foreclosure of such Leasehold Mortgages or otherwise, and to exercise the Company's option to purchase under the LDA and as more particularly set forth in Article XII hereof; and

(c) In the event such Leasehold Mortgagee determines to acquire the Company's interest, promptly upon obtaining possession of the Premises, commence to cure and diligently prosecute and complete the curing of all Defaults and Events of Default specified in such Mortgagee Notice of Termination which were not capable of being cured within the Initial Cure Period. The City agrees to cooperate in the removal of the Company from the Premises, but only upon the written request and at the expense of such Leasehold Mortgagee.

Section 7.4 Revocation of Termination Notice. If, by the Termination Date (as extended by the Adjournment Notice) (a) the obligations of the Leasehold Mortgagee contained in any Adjournment Notice shall have been fully performed and satisfied, except those that cannot be satisfied and fully performed by the Termination Date (in which latter event the Leasehold Mortgagee is diligently pursuing efforts to perform such obligations), (b) the Leasehold Mortgagee(s) or approved Transferee (as hereinafter defined) if it shall have taken over possession as aforesaid shall have assumed and agreed in writing, for the benefit of the City, to perform all of the terms, covenants and conditions of this Lease to be observed and performed by the Company, or shall have executed a new lease or sublease in form and substance identical hereto except for such change in the identity of the Company, and (c) all obligations on the Company's part to be performed hereunder through such adjourned Termination Date shall have been performed and no further Event of Default shall have occurred hereunder which shall not have been cured within the applicable grace period provided for herein, except those not capable of being performed or cured within such time, in which event the Company will have commenced and diligently pursued the curing of such default, and so long as such diligent efforts continue then and in such event the defaults and Events of Default set forth in the Mortgagee Notice of Termination shall be deemed to have been cured (or, in the case of a default, such as the bankruptcy of the Company, or failure to meet a time deadline which could not be cured by the Leasehold Mortgagees, shall be deemed to have been waived), the Termination Notice shall be deemed to have been revoked and of no effect, and this Lease shall continue in effect for the balance of the Term. It is expressly understood and agreed that any Leasehold Mortgagee can cure any default or any Event of Default, and the City is obligated to accept such cure in accordance with the terms of this Lease.

Subsection 7.4.1. Reinstatement of the Company. Notwithstanding anything to the contrary in this Article VII, in the event of a default or an Event of Default which has not been cured by the Company and the issuance of a Notice of Termination and a Mortgagee Notice of Termination, and where Leasehold Mortgagee has given an Adjournment Notice and has cured or is proceeding with a cure, then the curing Leasehold Mortgagee shall have the right within ninety (90) days of the Adjournment Notice to notify the City that, for this Event of Default, it elects not to remove the Company or it requires the City to reinstate the

Company as the tenant under this Lease subject to the default being timely cured pursuant to this Article VII.

Subsection 7.4.2. Effects of Cure or Failure to Cure. In the event of a cure, the City will execute and deliver to the Company and to the Leasehold Mortgagee a certificate stating that such Event of Default has been cured and that this Lease remains in full force and effect. If the Leasehold Mortgagee shall not have complied with all of the foregoing requirements of this Section 7.4 by the adjourned Termination Date unless such default is not capable of a cure by such date, then this Lease and the Term and all rights of the Company and the Leasehold Mortgagee and all Persons claiming by, through or under them shall automatically expire and terminate on the Termination Date as if such date were the date herein definitely fixed for the expiration of the Term, and the Company and/or the Leasehold Mortgagee shall immediately quit and surrender to the City the Premises. However, in the event such default is not capable of cure by the adjourned Termination Date, the adjourned Termination Date will be further extended so long as the Company's Leasehold Mortgagee's efforts to cure are being diligently pursued.

Section 7.5 Permitted Transferee. Except as otherwise set forth in Section 7.4 above and Subsection 7.5.2 below, the City shall have the right to reasonably approve (such approval to be subject to the limitations set forth in Sections 11.2.2 and 11.3.2), in accordance with the provisions of Subsection 7.5.1 below, any purchaser of or successor to the Company's interest in this Lease, the Improvements and the Equipment in any foreclosure proceeding, under any deed, assignment or other instrument delivered in lieu of such foreclosure (any such purchaser, successor, assignee or transferee other than a Leasehold Mortgagee being hereinafter referred to as a "Transferee").

Subsection 7.5.1. The City's Approval. Leasehold Mortgagee shall submit to the City, for its approval, the name of any proposed Transferees, together with such details of such proposed Transferees' character, experience and financial position, as well as schedules of their respective principals, owners and affiliates, as the City shall reasonably request and is available to Leasehold Mortgagee. The City shall advise such Leasehold Mortgagee of the City's approval or disapproval of each such proposed Transferee within ten (10) days after the City's receipt of the Leasehold Mortgagee's request for such approval; if the City reasonably disapproves (according to the standards set forth in this Section 7.5.1) a proposed Transferee submitted by the Leasehold Mortgagee, the City shall specify in any notice of disapproval the specific reasons for its disapproval, and the Leasehold Mortgagee shall have three (3) months from the date of the City's notice of disapproval to Leasehold Mortgagee within which to submit the name of one or more alternate proposed Transferees for each Transferee disapproved by the City, together with the background materials and information required above for the initial proposed Transferees. The City will then have an additional thirty (30) day period within which to approve or disapprove such alternate Transferee(s). In the event the City disapproves such alternate proposed Transferees, the parties herein agree that one or more acceptable Transferees shall be chosen by arbitration pursuant to the provisions of Article XVII of this Lease.

Subsection 7.5.2. Applicability to Mortgagee. The requirements of prior consent and requests for approval set forth in Section 7.5 and Subsection 7.5.1 above shall not apply to the purchase of, assignment of or succession to the Company's interest in this Lease and

the Premises by a Leasehold Mortgagee (or its subsidiary or affiliate) taking over possession as provided in Section 7.3 above, initiated by the Leasehold Mortgagee in connection with a default by the Company under the loan documents pertaining to the Leasehold Mortgage (Leasehold Mortgagee shall deliver to the City a copy of its default notice to Tenant or the Company, if any).

Section 7.6 Amendments of Lease. In the event that a Leasehold Mortgagee shall acquire or succeed to the Company's interest in this Lease and the Premises pursuant to the foregoing provisions of this Article, such Leasehold Mortgagee shall not be bound by any modification or amendment of this Lease made prior to its acquisition of such interests and after the date of the respective Leasehold Mortgage unless such Leasehold Mortgagee shall have consented in writing to such modification or amendment at (or after) the time it was made or at the time of such acquisition.

Without the prior written consent of the Leasehold Mortgagee, the City, and the Company shall not enter into any agreement modifying or amending this Lease or any term or condition of this Lease. No amendment or modification of this Lease shall be effective until the City receives the written consent of the Leasehold Mortgagee. Without the prior written consent of each Leasehold Mortgagee, the City shall not accept any voluntary surrender of this Lease. No voluntary surrender of this Lease shall be effective unless and until the City receives the written consent of each Leasehold Mortgagee.

Section 7.7 New Lease. Upon written request made by any Leasehold Mortgagee at any time after the acquisition of or succession to the Company's interest in this Lease by a Leasehold Mortgagee or any Transferee approved by the City pursuant to the foregoing provisions of this Article, the City shall enter into a new lease of the Premises with such Leasehold Mortgagee or such approved Transferee for the remainder of the Term, upon all of the covenants, conditions, limitations and agreements herein contained, at which time (in the case of execution of a new lease with an approved Transferee) the Leasehold Mortgagee so transferring to such Transferee shall be relieved of all obligations under this Lease, provided that the new tenant or subtenant (i) shall pay to the City, simultaneously with its execution and delivery of such new lease, all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the City in connection with the preparation of and the City's entry into such new lease, (ii) shall simultaneously with its execution and delivery of such new lease, cause this Lease and the memorandum of this Lease and, as the City may reasonably request, any other recorded or unrecorded documents executed by and between the City and any tenant hereunder to be terminated or satisfied in fact and/or of record, and (iii) shall deliver to the City such evidence as the City shall reasonably require evidencing the agreement of appropriate parties under any then existing Construction Agreements and Financing Documents to recognize such new lease and new tenant and to complete performance under their respective agreements, it being understood and agreed that the approved Transferee shall have the right to enter into agreements or modifications of the existing agreements not inconsistent with the terms of this Lease. To the extent that the City had the right hereunder or under the LDA to approve Construction Agreements and Financing Documents or Financing Commitments, the City shall have the right to review any modifications of such documents, and such consent shall not unreasonably be withheld or delayed. Nothing herein contained shall be deemed to impose any obligation on the part of the City to deliver physical possession of the Premises to the new tenant unless the City at the time of the execution and delivery of such new

lease shall have obtained physical possession thereof. It is understood and agreed that in the event that any Leasehold Mortgagee shall become the tenant hereunder, the Leasehold Mortgage shall not merge with said mortgagee's interest in the Leasehold, but shall remain separate and apart from the Leasehold. Upon the execution of such new lease, the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of this Lease to the date of execution of such new lease. Effective upon the commencement of the term of any new lease all subleases shall be assigned and transferred to the tenant under the new lease without recourse to the City. If more than one Leasehold Mortgagee makes written request upon the City in accordance with the provisions of this Section, the new lease shall be executed with the Leasehold Mortgagee prior in lien, and the written request of any other Leasehold Mortgagee shall be void and of no force or effect.

Section 7.8 Arbitration Proceedings. In any circumstances where arbitration is provided for under this Lease, the City and the Company agree that, following notice to it of the creation of a Leasehold Mortgage as aforesaid, the City shall give notice to each Leasehold Mortgagee entitled to notice as provided in Section 7.1 above of any demand by the City for any arbitration, and that the City shall recognize any Leasehold Mortgagee as a proper party to participate in such arbitration. In the event that the Company fails to designate the Company's arbitrator, the City shall give notice of same to the Leasehold Mortgagee and the Leasehold Mortgagee shall be afforded ten (10) days from the date on which the Company's time to designate such arbitrator shall have expired to do so.

Section 7.9 Required Mortgage Provisions. Each Leasehold Mortgage shall contain provisions substantially similar to the following:

(a) "The holder of this mortgage agrees that the proceeds of any insurance or the proceeds of any condemnation award which the holder of this mortgage receives shall be payable and applied in a manner that is not inconsistent with the applicable provisions of the lease hereby mortgaged."

(b) "This mortgage and the rights of the mortgagee hereunder, are limited to the Company's leasehold estate, and the fee interest owned by the City is not subordinate to such mortgage; this mortgage encumbers only the Company's interest in the leasehold estate. This mortgage does not encumber the City's fee title interest in the Premises or the interest of the City, as landlord, in such lease. The holder of this mortgage agrees from time to time within thirty (30) days after request therefor and without charge, to execute, acknowledge and deliver such instruments reasonably requested by the City under the lease hereby mortgaged to evidence the foregoing agreement, provided that any such instrument shall be in form and substance satisfactory to the holder of this mortgage."

Section 7.10 Lender Consortium. Anything to the contrary in Section 7.1 above notwithstanding, the Company shall have the right to make with a consortium of lenders ("Consortium") any Leasehold Mortgage permitted by this Article to be made with one or more Institutional Lenders and lenders other than Institutional Lenders, provided that:

(a) The individual lender selected to administer the loan for the Consortium shall be a "Lead Lender" as defined in Article 1 of this Lease;

(b) The lenders shall include one or more Institutional Lenders (including the Lead Lender), each of which shall participate in an amount that is no less than ten (10%) percent of the loan amount; and

(c) The Company shall have delivered to the City, if permitted by the lenders, a duly executed duplicate original of an agreement among the Lead Lender and all of the other lenders participating in the Consortium (all of which lenders, including the Lead Lender, are hereinafter collectively referred to as the "Participating Lenders"), appointing and authorizing the Lead Lender to take all action as agent, on behalf of all of the Participating Lenders, and to exercise any and all rights and remedies of the Participating Lenders under such Leasehold Mortgage and this Lease, including, without limitation, to give and receive all notices (including, without limitation, any and all Notices given or required to be given by the City under this Lease), reports, requests, consents and submissions to act as agent for service of process, to make advances and demands and to exercise discretion and all options, elections and remedies thereunder and hereunder.

(d) The City shall be entitled to rely upon notices given and actions taken by the Lead Lender as notices from and actions by all of the Participating Lenders. Any failure by the Lead Lender to exercise any right or remedy or take any other action shall constitute a waiver by the Participating Lenders of the right to exercise any such right or remedy or to take any such action. The City shall not be liable to, or otherwise responsible for, any failure of the Lead Lender to act in accordance with the wishes of any or all of the other Participating Lenders or in accordance with any agreement between the Lead Lender and any one or more of the other Participating Lenders.

Section 7.11 Cooperation by the City. The City agrees to cooperate in the execution of any documents or instruments necessary for the financing of this Lease provided that the City shall have the absolute right to approve or disapprove any document which subjects the City to any liability not otherwise provided for in this Lease, is inconsistent with resolutions adopted by the City Council of the City of Yonkers or alters or changes in any manner whatsoever the rights or duties of the parties hereto.

Section 7.12 No Merger of Lease in Fee. So long as any Leasehold Mortgage is in existence, the City's fee title to the Premises and the Leasehold Estate of the Company created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and the Leasehold Estate by the City. The City's termination of this Lease in accordance with the rights and remedies granted to the City in this Article VII and elsewhere in this Lease shall not be deemed to be a merger for the purposes of this subsection.

Section 7.13 Exclusion of Certain Conditions. Nothing contained herein shall require any Leasehold Mortgagee or its designee, as a condition to its exercise of any of its rights under this Article VII:

(a) to cure any default of the Company not reasonably susceptible of being cured by any person or entity other than the Company; or

(b) to cure or commence to cure any Event of Default consisting of the Company's failure to satisfy or discharge any lien, charge or encumbrance against the Company's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee (provided that such junior lien is not a lien on the fee estate in the Premises).

Section 7.14 Effect of Transfer; Limitation of Liability. For purposes of this Lease, a transfer of this Lease by way of foreclosure or in lieu of foreclosure shall not constitute an assignment of this Lease requiring the City's consent nor shall it constitute an Event of Default. A Leasehold Mortgagee, as such, shall not be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants and conditions on the part of the Company to be performed hereunder. Notwithstanding anything to the contrary contained in this Lease, the liability of any Leasehold Mortgagee, its successors and assigns, shall be limited in all respects to its interest in this Lease and the Leasehold Estate created hereby. Neither the Leasehold Mortgagee, its successors or assigns, nor any agents, partners, officers, trustees, directors, shareholder or principals (disclosed or undisclosed) of such Leasehold Mortgagee, shall have any personal liability hereunder and no judgment or decree that shall be enforceable beyond the interest of the Leasehold Mortgagee, or its successors or assigns, in the Leasehold Estate created under this Lease shall be sought or entered in any action or proceeding brought on account of or in connection with any default in the keeping, observance or performance of any covenant, agreement, term or condition of this Lease. The purchaser at any sale of this Lease and of the Leasehold Estate in any proceedings for foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of Article XI of this Lease and shall be deemed to have (a) agreed to perform all of the terms, covenants and conditions on the part of the Company to be performed hereunder which arise or accrue from and after the date of such purchase or transfer; and (b) to cure all existing defaults of the Company under this Lease, other than those defaults which are not reasonably susceptible of being cured by any person or entity other than the Company; but the liability of any such purchaser or transferee shall be limited in all respects to its interest in this Lease and the Leasehold Estate created hereby, and neither such purchaser or transferee, its successors or assigns, nor any agents, partners, officers, directors, shareholders or principals (disclosed or undisclosed) of such purchaser or transferee, its successors or assigns shall have any personal liability hereunder and no judgment or decree that shall be enforceable beyond the interest of such purchaser or transferee in the Leasehold Estate created under this Lease shall be sought or entered in any action or proceeding brought on account of any default in the keeping, observance or performance of any covenant, agreement, term, provision or condition of this Lease.

Section 7.15 Confirmatory Agreement. the City shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee an agreement, prepared at the sole cost and expense of the Company and in form reasonably satisfactory to such Leasehold Mortgagee and to the City, among the City, the Company and Leasehold Mortgagee,

confirming and agreeing to all of the provisions of this Article VII; provided, however, that by entering into such agreement, the City shall not be deemed to have waived any of its rights under this Lease, including any of its rights under this Article VII.

Section 7.16 Legal Proceedings between the City and the Company. The City shall give each Leasehold Mortgagee prompt notice of any legal proceedings between the City and the Company involving obligations under this Lease. The Leasehold Mortgagee shall have the right to intervene in any such proceedings and to be made a party to such proceedings; and the City and the Company do hereby consent to such intervention. In the event that the Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, the Company shall give the Leasehold Mortgagee and every other Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding upon all Leasehold Mortgagees.

Section 7.17 Notices. All notices shall be given in the manner described in Section 22.3 and shall in all respects be governed by the provisions of that Section.

Section 7.18 Mortgagee Deemed to Have Agreed. Under the provisions of this Article VII, certain rights created hereunder are exercisable only by the Leasehold Mortgagee. By accepting a Leasehold Mortgage, each Leasehold Mortgagee shall be deemed to have consented and agreed to the provisions set forth in this Article VII.

Section 7.19 Parties Not Third Party Beneficiaries. Neither the Company nor the City shall be deemed to be a third party beneficiary of the rights granted hereunder to Leasehold Mortgagees and no Leasehold Mortgagee shall have any obligation to either the Company or the City to account for any decision it may make as to whether or not it elects to exercise its rights hereunder or any duty to either the Company or the City to exercise its right hereunder in any particular manner or order, other than that which the Leasehold Mortgagee, in its sole discretion but in any event subject to the terms of this Lease, shall deem appropriate and its own best interests.

Section 7.20 No Changes in Use or Improvements. Without limitation of any other provision of this Article VII, it is agreed that nothing contained in this Article VII or in any other provision of this Lease shall be deemed or construed to permit or authorize any Leasehold Mortgagee or any successor thereto or any successor to the Company to devote the Premises or any part thereof to any uses, or to construct any improvements or facilities thereon, other than those uses, or improvements or facilities, permitted in this Lease.

Section 7.21 No Subordination. The City's interest in this Lease, as the same may be modified, amended or renewed, and the City's interest in the Premises shall not, under any circumstance, be or become subject or subordinate to any Leasehold Mortgage now or hereafter placed upon, or any other liens or encumbrances hereafter affecting this Lease, the Company's interest in this Lease, or the Company's Leasehold Estate in the Premises pursuant hereto.

ARTICLE VIII

INSURANCE

Section 8.1 Coverage. Throughout the Term, the Company shall obtain and maintain in effect the following types of insurance coverage at no cost or expense to the City:

(a) Insurance on the Premises against loss or damage by fire and lightning, and all of the hazards included in the extended coverage endorsement, including, without limitation, lightning, vandalism, malicious mischief, sprinkler leakage and difference in conditions (including the perils of flood, earthquake, collapse and water damage and all other perils as defined in the current standard "all-risk" form), such insurance to be in an amount equal to not less than 90% of the actual replacement cost of the Improvements (exclusive of the cost of replacing excavation, foundation and footings). The foregoing fire and extended coverage and insurance shall include "all risk" insurance for physical loss or damage. During the construction of the Premises, the Builder's Risk form of fire and extended coverage insurance (which shall include "all risk" insurance for physical loss or damage as aforesaid) shall be used.

(b) Comprehensive general liability and property damage insurance against claims for personal injury or death, or property damage suffered by others occurring on or about the Premises or any improvement or equipment located thereon, such public liability insurance to afford, with respect to any accident or occurrence, protection to the limits of not less than Ten Million Dollars (\$10,000,000) combined single limit for bodily injury and death and for property damage, together with contractual coverage (including but not limited to broad form contractual liability for the purposes of covering the indemnification provisions set forth in Article XX hereof) and completed operations, and owner's and contractor's protective liability on the operations of all contractors and subcontractors, respectively; all of such insurance shall, by its terms, be primary and noncontributory with respect to any other insurance carried by the City;

(c) Automobile liability and property damage insurance for all owned, non-owned and hired vehicles insuring against liability for bodily injury and death and for property damage to afford protection to the limits of Five Million Dollars (\$5,000,000) combined single limit; such insurance shall, by its terms, be primary and noncontributory with respect to any other insurance carried by the City;

(d) Worker's compensation insurance (including \$500,000 employer's liability insurance) providing the statutory benefits required under applicable law; and

(e) Rent abatement insurance in an amount equal to six (6) months Annual Rent.

Section 8.2 Policies. The policies of insurance shall comply with the following requirements.

Subsection 8.2.1. General Requirements. All of the policies of insurance provided for in this Lease shall be with reputable companies licensed and authorized to issue such policies in such amounts in the State of New York. Such insurance may be carried under

blanket policies that include other properties and provide separate coverage for the Premises and the Improvements. Upon request, the Company shall deliver to the City certificates showing such insurance to be in full force and effect. Such certificates shall be endorsed to show the receipt by the issuer of the premiums therefor or shall be accompanied by other evidence satisfactory to the City of payment of such premiums. If the premium covers more than one (1) year and may be paid in installments, then only an annual installment must be paid in advance. Such policies shall contain express waivers by the insurer of any rights of subrogation against the City. Any required insurance coverage shall be subject to deductible amounts reasonably satisfactory to the City.

Subsection 8.2.2. Insureds. All insurance to be provided by the Company shall name the Company as insured and the City of Yonkers as additional insured and may, at the option of the Company, name any Leasehold Mortgagee or any other Persons, all as their respective interests may appear.

Subsection 8.2.3. Payment of Loss. All policies of insurance required to be maintained by the Company under this Lease, except for liability insurance, shall provide for payment of loss to the Company, and may be applied by the Company to such purposes as the Company deems appropriate, subject to any obligations of the Company with respect to application of insurance proceeds under this Lease, and subject to the requirements of any Leasehold Mortgage. All such policies of insurance shall provide for the adjustment of claims with the insurers under such policies by the Company.

Subsection 8.2.4. Renewal and Cancellation. Each policy of insurance required to be maintained by the Company under this Lease shall provide that it may not be canceled by the insurer for nonpayment of premiums or otherwise until at least ten (10) days after service of notice of the proposed cancellation upon the City.

Subsection 8.2.5. Leasehold Mortgagee Insurance Provisions. Notwithstanding any insurance requirements of any Leasehold Mortgagee, the insurance requirements under this Lease shall not be amended or reduced, and shall be in addition to any insurance requirements of any Leasehold Mortgagee. At the time of delivery of any casualty notice to the applicable insurer, the Company shall deliver copies of such notice to the Leasehold Mortgagee.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.1 Repair or Restoration. If at any time during the Term, but prior to the conveyance of fee title to the Premises in accordance with the provisions of the LDA and Article XII of this Lease, all or any part of the Premises shall be damaged or destroyed by fire or other casualty, then the Company shall, at the Company's sole cost and expense, commence and thereafter proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss, obtaining necessary financing and for Unavoidable Delays) to repair, restore, replace or rebuild the Improvements to

substantially the same condition as existed immediately prior to the damage or destruction and substantially in accordance with the Construction Agreements originally approved by the City, or such other construction agreements, as may be approved by the City in accordance with the procedures set forth herein (the "Restoration Work").

Section 9.2 Insurance Proceeds: Deficits or Excess. If the insurance proceeds received by the Company are insufficient to pay the entire cost of the Restoration Work, then the Company shall be responsible for the amount of any such deficiency. If the insurance proceeds received by the Company shall exceed the entire cost of the Restoration Work, then such excess proceeds shall be the sole and absolute property of the Company, subject to the provisions of the Leasehold Mortgage.

Section 9.3 The City Not Obligated; Mutual Release. Under no circumstances shall the City be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Restoration Work. To the extent any insurance is not invalidated thereby, the City and the Company hereby releases and waives, any claims such party may have against the other party from any liability for any loss or damage to any or all property located in the Premises or on the Premises, including any resulting loss of rents or profits of each, and of any occupant of the Improvements claiming its right of occupancy by or through such releasing and waiving party, which loss or damage is of the type covered by the insurance required to be maintained by it under Article VIII, regardless of any negligence on the part of the released party which may have contributed to or caused such loss or damage, and on behalf of such party's insurance carrier, waives any right of subrogation that may arise therefrom. If any party is by law, statute or governmental regulation or for any other reason (including insurance company requirements) unable to obtain or otherwise fails to obtain a waiver of the right of subrogation for the benefit of each other party then, during any period of time when such waiver is unobtainable, or has not been obtained for any reason, said party shall be deemed not to have waived any right of subrogation of its insurance carrier against the other party, and during the same period of time the other party shall be deemed not to have waived the right of subrogation of its insurance carrier against the party who has been unable, or failed for any reason, to obtain such waiver.

ARTICLE X

CONDEMNATION

Section 10.1 General. If a Taking occurs at any time during the Term but before fee title to the Premises is conveyed in accordance with the provisions of the LDA and Article XII of this Lease, then the provisions of this Article X shall apply to the condemnation proceedings and the distribution of any Condemnation Awards pertaining to such Taking.

Section 10.2 Improvements. The Condemnation Award attributable to the fee title estate for the Premises shall belong entirely to the City. This provision shall govern whether or not separate awards are made to the City, and the Company.

Section 10.3 Separate Awards by Court. The court in such condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to the City and the Company, and the City and the Company shall request such action by such court. The provisions of Subsections 10.4.2 and 10.4.3 concerning termination of the Term and receipt and payment of the award shall also apply to circumstances governed by this Section 10.3 and shall be taken into account by the court in rendering separate awards

Section 10.4 Single Award by Court.

Subsection 10.4.1. General. If the court in such condemnation proceedings is prohibited by law from making separate Condemnation Awards to the City and the Company, or declines to do so, then the provisions of Section 10.2 and this Section 10.4 shall apply to the distribution of the single Condemnation Award made by such court.

Subsection 10.4.2. Total Taking. If a Total Taking (other than a Temporary Taking) occurs, then the Rent shall be prorated between the City and the Company as of the Date of Taking, and this Lease shall be terminated as of the Date of Taking. The following provisions shall apply to the allocation of any Condemnation Award for such Total Taking:

(a) All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a mutually agreeable escrow agent, and shall be distributed pursuant to the terms of this Subsection 10.4.2; and

(b) The Condemnation Award shall be distributed and disbursed in the following amounts and in the following order of priority:

(1) To the City, the greater of (i) the Purchase Price as adjusted under Article XII hereof, or (ii) a sum equal to the fair market value, as of the Date of Taking, less the adjustments for environmental remediation costs paid by the Company, of the City's fee title interest to the Premises; and then

(2) Subject to the rights of Leasehold Mortgagees, to the Company the balance of the Condemnation Award.

Subsection 10.4.3. Partial Taking. If a Partial Taking occurs, then the Term shall not be reduced or affected in any way, this Lease shall remain in full force and effect for the portion of the Premises remaining after such Taking, and the portion of the Annual Rent payable under Section 3.1 of this Lease shall only be reduced if the Premises and the Improvements thereon are subject to the Taking, and if so taken, the reduction in Annual Rent shall be determined by appraisal based upon the same or similar method set forth in Article III hereof for determining an appraisal rent. Provided, however, if all of the Premises is taken, and the City receives the condemnation award for the fee title interest of the Premises, then the Annual Rent shall be reduced to \$ -0 -. The following provisions shall apply to the allocation of any Condemnation Award for such Partial Taking:

(a) All sums, including damages and interest, constituting the Condemnation Award shall be deposited promptly with a mutually agreeable escrow agent, and shall be distributed and disbursed pursuant to the terms of this Subsection 10.4.3;

(b) The Company shall receive an amount sufficient to restore the Premises to an economically feasible state as close as is practicable to the condition set forth in the Construction Agreements originally approved by the City and shall commence and thereafter proceed to repair, alter, raze or restore the remaining part of the Premises, or otherwise to secure the Premises and render the Premises safe. Notwithstanding anything to the contrary contained herein, if after partial taking, the Premises is not, in the Company's reasonable judgment, economically viable, the Company can terminate this Lease.

(c) The remainder of the Condemnation Award shall be distributed and disbursed in the following amounts and in the following order of priority:

(1) To the City a sum equal to the greater of (i) the Purchase Price as adjusted under Article XII hereof or (ii) the fair market value, less the adjustments for environmental remediation costs paid by the Company as of the date of the Taking, of the City's fee title interest in the Premises which sum shall be further adjusted based upon the square footage of the Premises so taken; and then

(2) Subject to the rights of Leasehold Mortgagees, to the Company the balance of the Condemnation Award.

If the Condemnation Award received by the Company is insufficient to pay the entire cost of the Restoration Work, then the Company shall pay the amount of any such deficiency. Under no circumstances shall the City be obligated to make any payment, disbursement or contribution towards or on account of the cost of the Restoration Work.

Subsection 10.4.4. Temporary Taking. If a Temporary Taking occurs, then the Term shall not be reduced or affected in any way and the Company shall continue to pay in full the Rent, without reduction or abatement, in the manner and at the times specified in this Lease. Except only to the extent that the Company is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority, the Company shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such Taking had not occurred. Upon any such Temporary Taking, the Company shall be entitled to receive the entire amount of any Condemnation Award made for such Temporary Taking whether such award is paid by way of damages, rent or otherwise.

Section 10.5 Condemnation Proceedings. The Company, the City and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals in such proceeding.

Section 10.6 Notice of Condemnation. If the City, or the Company receives notification of any proposed or pending condemnation proceeding affecting the Premises, then the party receiving such notification shall promptly give notice to the other party, and to each Leasehold Mortgagee.

Section 10.7 Condemnation Settlement. The City shall not settle or compromise any taking proceeding without the prior consent of the Company if the settlement or compromise adversely affects the Company's right to compensation hereunder.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

Section 11.1 Representations as to Redevelopment.
The Company represents and agrees that this Lease and the undertakings required pursuant to this Lease are for and shall be used for the purpose of urban renewal and redevelopment under Article 15 and not for speculation. The Company agrees that in view of:

(a) the importance of the redevelopment of the Premises as a whole to the general welfare of the City of Yonkers, and

(b) the substantial expenditures and other public commitments made and to be made by the City for the purpose of making such redevelopment possible, the qualifications and identity of the Company are of particular concern to the community and the City. The Company further recognizes that it is because of such qualifications and identity that the City is entering into this Lease with the Company for the faithful performance of all undertakings and covenants by it to be performed hereunder and under the LDA.

Section 11.2 Sale, Transfer or Assignment of Lease.

Subsection 11.2.1. Prohibition. For the reasons set forth in Section 11.1, the Company agrees that prior to Final Completion:

(a) The Company may, upon written notice to the City, assign its interest in the lease and/or the Premises to an Affiliate without the written approval of the City; and the Company, upon written notice to the City, but without the written consent of the City, shall have the right at any time to assign this Lease and any and all subleases of the Premises to any Leasehold Mortgagee as collateral security for the obligations of the Company under a Leasehold Mortgage.

(b) Neither this Lease nor the Company's interest in the Premises, nor any part thereof, may be sold, transferred or assigned to anyone, including an Affiliate, if the consideration payable by the transferee or assignee or on its behalf shall exceed the aggregate amount of all expenditures actually made by the Company for or in connection with the Premises prior to such transfer or assignment, it being the purpose and intention of this subsection 11.2.1 that the Company shall not make any profit through such sale, transfer or assignment prior to Final Completion of the Improvements, except as may be otherwise provided in subsection 11.2.2 hereof.

(c) The Company will not make (and heretofore has not made) any total or partial assignment, pledge, encumbrance or other disposition or any trust or power, or transfer in any

other mode or form of this Lease in its entirety, or rights therein, or any contract or agreement to do any of the same, except to an Affiliate of the Company.

(d) The restrictions in this subsection 11.2.1 shall also apply to any sale, transfer, assignment, pledge, or other disposition or the making of any trust or power in a single transaction or in the aggregate, of

(i) more than fifty (50%) percent of the aggregate ownership or members' interest in the Company, or more than fifty (50%) percent of the capital stock of any successor to the Company (permitted or approved hereunder) that is a corporation, or more than a fifty (50%) percent ownership interest in any successor to the Company (permitted or approved hereunder) that is a general partnership, or more than a fifty (50%) percent ownership interest in the general partner (or, considered in the aggregate, the general partners, if more than one) in any successor to the Company (permitted or approved hereunder) that is a limited partnership; or

(ii) more than fifty (50%) percent of the ownership or member's interest of _____ in the Company, unless he remain as a Manager of the Company, provided, however, that the prohibition set forth above in this subparagraph (d) shall not apply to any sales, transfers, assignments, pledges or other dispositions (A) to or between the members of the Company, so long as the interest in the Company owned by _____, is not reduced, in the aggregate, below fifty-one percent (51%); or (B) of the stock of any publicly held company or of any Financing Entity to the extent any such entity becomes, in compliance with the provisions of this Article XI, part of the Company; (C) to a Financing Entity provided, that the interest of the Financing Entity shall not exceed fifty (50%) percent of the aggregate ownership or members' interest in the Company, and provided, further, in the event of such a transfer to a Financing Entity, that _____, shall continue to be the Manager(s) of the Company (or shall continue to be the managing general partner(s) of a permitted general partnership successor to the Company, or shall continue to be the only general partner(s) of a permitted limited partnership successor to the Company, or shall continue to be the owner(s), in the aggregate, of at least fifty-one (51%) of the voting shares of any permitted corporate successor to the Company), or (D) of any limited partner interests in any permitted limited partnership successor to the Company.

(e) Subsequent to Final Completion and for a two-year period following Final Completion, neither this Lease nor the Company's interest in the Lease or the Premises, nor any part thereof, may be sold, transferred or assigned to anyone without the prior written consent of the City, which consent shall not be unreasonably withheld, provided that the Company shall pay to the City an amount equal to ten (10%) of the net transaction proceeds obtained from such assignee or transfer.

Subsection 11.2.2. Conditions of the City's Approval. The City shall be entitled to require, except as otherwise provide in this Lease, as conditions to any required approval by the City pursuant to this Section 11.2 that:

(a) Any proposed assignee or transferee shall have the qualifications, experience and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in the Lease by the Company with respect to this Lease, the LDA, and the construction, operation and marketing of the Premises.

(b) A duplicate original of the instrument of sale, transfer or assignment, duly executed and acknowledged by all parties to the transaction, and containing the assumption provisions required under Paragraph (c) below, shall have been submitted to the City for review and approval promptly following the execution thereof, and in any event not less than fifteen (15) days prior to the date of the Closing, and there shall have been submitted to the City for review and approval, together with such instrument, (i) a statement containing information concerning the purchaser, transferee or assignee substantially equivalent to the information required by Redeveloper's Statement for Public Disclosure and Redeveloper's Statement of Qualifications and Financial Responsibility (form HUD-6004) and required attachments thereto, and (ii) evidence reasonably satisfactory to the City of the power and authority of the purchaser, transferee or assignee to enter into such assignment and assumption agreement.

(c) Any proposed purchaser, transferee or assignee, by an agreement in writing satisfactory to the City, shall for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Company under this Lease and shall have agreed to be subject to all the conditions and restrictions to which the Company is subject with respect to this Lease, and the Premises, provided, that the fact that any assignee or transferee of, or any other successor in interest whatsoever to, this Lease shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Lease or agreed to in writing by the City) relieve or except such assignee, transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the City of or with respect to any rights or remedies or controls pertaining to this Lease or the Premises, as the case may be. It is the intent of this Subsection 11.2.2, together with other provisions of this Lease, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease) no assignment or transfer of, or change with respect to, this Lease or the Company's Leasehold Estate or any rights under this Lease or rights pertaining to the Premises, or any interest in this Lease or in such Leasehold Estate or in the Premises or in the Improvements, or in the Company, however consummated or occurring, and whether voluntary or involuntary shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to this Lease or the Premises or the construction of the Premises thereon, as the case may be, that the City would have had, had there been no such transfer or change.

(d) Neither the Lease nor the Company's interest in the Lease or the Company's Leasehold Estate, nor any part thereof, nor any ownership or member's interest in the Company (or in any successor-in-interest to the Company), may be sold, transferred or assigned by the Company or by any such successor if the consideration payable by the transferee or assignee or on its behalf shall exceed the aggregate amount of all expenditures actually made by the Company for or in connection with the Premises prior to such transfer or assignment, it being the purpose and intention of this Paragraph (d) that the Company (or any such successor) shall not

make any profit through such sale, transfer or assignment prior to Final Completion of the Premises. In the event any such sale, transfer or assignment is made (and is not canceled) the City shall be entitled by notice to the Company given within the time period set forth for approval of such transfer as provided in this Section 11.2.2, to increase the Annual Rent payable by the Company (or any such successor) in the first year of the term of this Lease in which Annual Rent is payable by the amount that the consideration for the sale, transfer or assignment is, as reasonably determined by the City, in excess of the amount that may be authorized pursuant to this Paragraph (d).

(e) In the absence of specific written agreement by the City to the contrary, no such assignment or transfer, or approval thereof by the City, shall be deemed to (i) relieve the Company or any other person bound in any way by this Lease from any of its obligations under this Lease, or (ii) impair or reduce the effective, day-to-day control of _____, over the development and construction activities for which the Company is responsible under this Lease.

(f) In connection with any assignment or this Lease or sale of the Premises permitted under this Article XI, the Company shall, as a prior condition of the effectiveness of any such assignment or sale, deliver to the City the agreements and documentation required under Paragraph (b) and Paragraph in Subsection 11.2.2 above, and the provisions of the final sentence of said Paragraph (c) shall be applicable. In case of any such assignment or sale permitted under this Article XI, the assignor or seller shall not be liable for any default under this Lease occurring after the date of the assignment or sale or for any obligations or liabilities of the Company accruing from and after the date of such assignment or sale, provided, that upon any assignment or sale, the Company shall not be released from any pre-existing, continuing defaults hereunder, unless the assignee or purchaser shall execute an assumption agreement with respect thereto in form and substance reasonably satisfactory to the City.

Subsection 11.2.3. Omitted.

Subsection 11.2.4. Invalid Assignment. No assignment, transfer or sale (whether or not the City's consent is required therefor) of this Lease or the Company's interest in this Lease or any part thereof or interest therein or in the Premises, nor any ownership or member's interest in the Company (or in any successor-in-interest to the Company) shall be valid unless and until the provisions, procedures and preconditions set forth in this Article XI applicable thereto have been satisfied, performed and fully complied with, as the case may be.

Section 11.3 Assignment by the City. The City shall have the right to assign its rights under this Lease freely, without any restriction or condition whatsoever, and without the Company's consent, to any other Person, political subdivision, municipal corporation, public agency, public corporation, public benefit corporation or other governmental entity

Section 11.4 Subletting.

Subsection 11.4.1. Permitted Subletting. Except as provided in Subsection 11.4.2 below, any sublease of the Premises or any part thereof by the Company and any sublease of the Premises or any apart thereof by the Company shall be subject to the reasonable prior

approval by the City, the conditions for which are set forth above for transfers and assignments under Subsection 11.2.2; provided however, if there is a sublease for all, or substantially all, of the Premises for an annual rent in excess of the Annual Rent paid, or to be paid, by the Company, the Annual Rent hereunder shall be redetermined (as if such date were the Rent Adjustment Date) by an appraisal rent as set forth in Article III hereof.

Subsection 11.4.2. Permitted Further Subletting. The Company shall have the right to sublease any portion of the Premises in the ordinary course of its operation thereof.

Subsection 11.4.3. Rights of Subtenants. All subleases covering any portion of the Premises shall be subject and subordinate to this Lease and the rights of the City under this Lease, and the sublease instruments shall so provide. Notwithstanding the terms of any sublease, the City may elect, upon written notice to any subtenant thereunder delivered within thirty (30) days after the termination of this Lease, to require any such subtenant to attorn to the City such that, notwithstanding the termination of this Lease, such sublease shall continue for the duration of its term and extensions of its term as a direct lease between the City and such subtenant; provided, however, that:

(a) The City shall not be responsible to the subtenant in question for any security deposits (unless the security deposits have been transferred to the City) paid under its sublease nor for any rental that is paid more than thirty (30) days in advance of the due date under the terms of such sublease;

(b) The City shall not be liable for any act or omission of the Company or be subject to any offsets or defenses that such subtenant may have against the Company.

(c) The City shall provide to any subtenant requesting the same an attornment and non-disturbance agreement reasonably satisfactory to such subtenant. Such agreement shall contain (among other provisions) language to the effect that if for any reason this Lease is terminated by the City in accordance with its terms, the City will agree not to terminate the sublease (if subtenant is not in default thereunder) and such sublease shall continue with the same force and effect as if the City had entered into such sublease with the subtenant.

Section 11.5 Continuing Requirement of Consent.

Any consent by the City under any of the foregoing provisions of this Article XI shall apply only to the specific transaction thereby authorized and shall not relieve the Company from the requirement of obtaining the prior written consent of the City to any other transfer, assignment, sale or subletting.

ARTICLE XII

OPTION TO PURCHASE

Section 12.1 Grant of Option. The City, in consideration of this Lease, grants to the Company the option (the "Option") to purchase the Premises from the City at any time during the period commencing on the Substantial Completion Date (as such date is defined in Article IV hereof) and ending on the six (6) month anniversary of

the Substantial Completion Date (respectively, the "Option Period," and the "Option Expiration Date"). In the event the Company fails to exercise the Option during the Option Period, the City shall give notice to the Leasehold Mortgagee, and the Leasehold Mortgagee shall have the right to exercise the Option for a period of thirty days thereafter.

Section 12.2 Option Terms and Conditions. The Option shall be exercised during the Option Period, if at all, on or before the date which is at least thirty (30) days before the date of proposed transfer of title. The closing shall take place on the applicable date at a location mutually agreed upon by the parties in writing or, if none is agreed, at the office of a lender providing loan financing to be used by the Company to pay the purchase price. The conveyance of fee title to the Company shall be subject to the continuing conditions of this Lease, as the same may be amended.

Section 12.3 Purchase Price.

Subsection 12.3.1. Determination of Price. The purchase price of the Premises upon exercise of the Option shall be \$_____, as more particularly set forth in the LDA (the "Purchase Price"). If the Company does not exercise the option to purchase the Premises, and is not otherwise in default, only the deposit actually paid by the Company under the LDA shall be refunded to Company.

Section 12.4 No Exercise of Option to Purchase Upon Default. The Company shall have fulfilled all of its obligations under this Lease and must cure any existing material Event of Default pursuant to the curative provisions of this Lease, prior to and as a condition of exercising the Option and as a condition of closing on or before the Option Expiration Date.

Section 12.5 Deed; Costs. At the closing, the City shall convey the Premises to the Company by bargain and sale deed with covenant, unless the Company accepts such lesser title that the City may have by quitclaim deed without any reduction or abatement of the Purchase Price. The deed for the Premises shall be duly executed and acknowledged by the City, in a manner proper for recordation, AS IS, without warranty as to the condition of the Premises. The Company shall bear the costs incurred in connection with the closing, including title insurance, the survey, the applicable real property taxes and other Impositions from the date of this Lease, the requisite state and local real property transfer taxes, and other transfer or similar taxes or transfer gain taxes which may then be in effect with respect to such conveyance and/or recording of the deed, and recording fees; provided, however, that the Company and the City shall each bear the cost of their own attorney's fees. The City's fee title interest in the Premises shall be conveyed to the Company subject only to this Lease, the City Mortgage, the LDA and the Permitted Title Exceptions.

Section 12.6 Lease Remains in Effect. Upon the sale and purchase of the Premises, the terms and provisions of this Lease shall remain in full force and effect, subject only to certain changes to the terms and provisions which shall become effective upon the Closing Date, as set forth in the proposed amendment set forth in Exhibit D attached hereto and made part hereof.

Section 12.7 Failure by the Company to Close. If, after the Option is exercised, the Company, without fault on the part of the City, fails to pay the Purchase Price, execute and deliver all documents and take any other actions that may be necessary in order to consummate its purchase (referred to below in this Section as the "failed closing date") in accordance with the terms of this Option, then the Company shall reimburse the City in an amount equal to one hundred and ten percent (110%) of all reasonable costs and expenses incurred by the City, including without limitation reasonable attorney's and appraisers' fees, in connection with the Company's exercise of the Option, and the Company shall not have the right to again exercise the Option for a period of twelve (12) months following the failed closing date.

Section 12.8 Assignment of Option. The Option may not be assigned by the Company separate and apart from this Lease without the prior written consent of the City. However, this Option shall inure to the benefit of the Company's successors and permitted assigns with respect to the Lease, including the Leasehold Mortgagee in connection with the Leasehold Mortgagee's exercise of its rights and remedies in the event of default under the terms and conditions of its loan financing agreements with the Company; provided, that prior to the exercise of the Option by the Leasehold Mortgagee as contemplated in any provision of this Lease, the Leasehold Mortgagee shall deliver to the City a written statement certifying that the Company is in default under such one or more of such agreements, accompanied by a copy of the notice of default delivered by the Leasehold Mortgagee.

Section 12.9 Continuing Covenants. Notwithstanding any conveyance of title to the Premises under this Article XII, the provisions of Article V of this Lease pertaining to use of the Premises, the provisions of Article VII pertaining to anti-speculation, and the provisions of this Lease and of the LDA pertaining to nondiscrimination and equal employment opportunity in the use and occupancy of the Premises shall survive such conveyance and shall remain in full force and effect until the expiration and/or termination of the Urban Renewal Plan, unless such provisions are otherwise extended pursuant to law.

Section 12.10. Estoppel Certificates. At the closing of fee title from the City to the Company, the City and the Company shall each prepare and deliver an estoppel certificate to the Leasehold Mortgagee in accordance with the provisions of Section 22.6 of this Lease.

ARTICLE XIII

DEFAULTS BY THE COMPANY AND THE CITY'S REMEDIES

Section 13.1 Events of Default by the Company. The occurrence and continuance of any of the following events, acts or circumstances shall be and constitute an "Event of Default" by the Company:

(a) Failure by the Company to pay, or cause to be paid, in full any Rent payable under this Lease when due, and the continuance of such failure for sixty (60) days after the City gives notice of such failure to the Company.

(b) Failure by the Company to pay, or cause to be paid, any Additional Rent, including any Impositions, when required to be paid hereunder, and the continuance of such failure for sixty (60) days after the City gives notice of such failure to the Company.

(c) Failure by the Company to obtain, or cause to be obtained, and maintained in full force and effect any policies of insurance required to be maintained hereunder, and the continuance of such failure for sixty (60) days after the City gives notice of such failure to the Company.

(d) Failure by the Company to observe, perform or comply with any of the terms, covenants, agreements or conditions contained in this Lease (other than as specified in Section 13.1(a), (b) and (c)), or if the representations and warranties set forth in Section 16.1 of this Lease shall be inaccurate in any material respect, and the continuance of such failure, inaccuracy or incompleteness for sixty (60) days after the City gives notice of such failure or inaccuracy to the Company, or, when the cure reasonably requires more than sixty (60) days, the failure of the Company to (i) commence to cure such failure, inaccuracy or incompleteness within such period of sixty (60) days, and (ii) thereafter to diligently and continuously prosecute such cure to completion; or

(e) Failure by the Company to perform the covenants and agreements set forth in the LDA to be performed by the Company after the date hereof, or if any of the Company's continuing representations in the LDA, as enumerated therein, which by the express terms of the LDA specifically survive the closing provided for in the LDA, are or become inaccurate or incomplete in any material respect, and such inaccuracy or incompleteness materially affects the Company's ability to perform its obligations under this Lease, or if the Company shall otherwise be in default under the LDA, and any such default shall continue uncured for sixty (60) days after notice thereof is given by the City to the Company, and shall continue uncured throughout any further or additional periods of notice and opportunity to cure provided for in the LDA, or if such default is capable of being cured but is not curable within such sixty (60) day period, for such longer period of time as may be necessary to cure any such curable default using due diligence, provided that the Company promptly commences and diligently pursues efforts to effect such cure.

(f) The admission in writing by the Company of its inability to pay its debts generally as they become due, or the making by the Company of a general assignment for the benefit of creditors, or the commencement by the Company or any such member of any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company, or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Company, for the Premises or the Premises and/or any substantial parts thereof, or for all or any substantial part of its property or assets;

(g) The commencement of any case, proceeding or other action against the Company, seeking to have an order for relief entered against the Company as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Company or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Company, for the Premises, and/or any parts thereof, or for all or any substantial part of its property or assets, and such case, proceeding or other action (i) results in the entry of an order for relief against the Company (or in the appointment of a receiver, trustee, custodian or official for the Premises or the Premises which is not stayed within forty-five (45) business days after entry thereof, or (ii) is not dismissed (or otherwise not vacated) for a period of ninety (90) days.

(h) The levying or filing against the Premises or the Improvements or any part thereof, of any execution, warrant, attachment, garnishment or other similar process, and such processes shall not be stayed, vacated, secured or discharged within ninety (90) days after the same shall have been levied or filed or such longer period as may be reasonably required provided a surety company bond has been posted.

(i) The vacating or abandonment by the Company of the Premises, the Improvements or any parts thereof for a period of time (in excess of sixty (60) days which is inconsistent with the continued diligent performance and observance by the Company of its covenants and agreements to be observed and performed hereunder, unless such vacating or abandonment was caused by a permitted cause hereunder, i.e., Unavoidable Delay or extensions of time for the benefit of the Leasehold Mortgagee under Article VII hereof), and such event shall continue uncured for a period of ninety (90) days after notice thereof is given to the Company.

(j) The assignment or transfer by the Company of this Lease without the City's approval (where required hereunder, or without compliance with the provisions of this Lease applicable thereto).

(k) The failure by the Company to maintain its legal existence in good standing or fail to pay any franchise tax when and as the same shall become due and payable, and any such failure shall continue uncured for ninety (90) days after notice thereof is given by the City to the Company, or if such failure is capable of being cured but is not curable within such ninety (90) day period, for such larger period of time, up to a maximum of one (1) year, as may be necessary to cure such failure using due diligence, provided that the Company promptly commences and diligently pursues efforts to effect such cure.

(l) The occurrence of an Event of Default by the Company under the LDA beyond any applicable grace and notice periods thereunder.

Section 13.2 Remedies of the City. Whenever any Event of Default by the Company shall exist, the City may take any one or more of the following remedial steps (subject to the provisions of Article VII):

(a) The City may sublease the Premises in their entirety or in parts for the account of the Company or operate the Premises, and collect rents from the Company's subtenants (reserving, however, within the City's reasonable judgment, the right to determine the method of collection

and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and the City shall not be accountable for money other than money actually received by the City from the Premises), and in this connection the Company authorize the City upon such entry to take over and assume the management, operation and maintenance of the Premises and in general to perform all actions necessary in connection with such management, operation and maintenance in the same manner and to the same extent as the Company might so act, using the City's reasonable, good faith efforts to operate the Premises and/or the Premises for the account of the Company.

(b) The City may terminate this Lease upon at least 30 days written notice to the Company, take possession of the Premises and (by summary proceedings or otherwise) exclude the Company from possession thereof (using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor) and/or dispossess the Company, and hold the Company liable for damages. Upon any such termination, the Company shall continue to be liable for its obligations to pay Rent and other amounts due hereunder, but no further rights, obligations or duties shall continue to exist between the parties by virtue of this Lease.

(c) The City may take any and all actions at law or in equity to collect the Rent then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease, and in connection with either, to recover any or all costs, including reasonable attorneys' fees, to the City for the Company's violation or breach of this Lease.

(d) If the City shall terminate the Lease as herein-above provided, the City may (i) complete construction of all Improvements required to be constructed by the Company hereunder and may repair and alter the Premises and the Improvements in such manner as the City may deem necessary or advisable, and/or (ii) let or relet the Premises and/or the Improvements, or any parts thereof, for the whole or any part of the remainder of the Term or for a longer period, in the City's name or as agent of the Company, and/or (iii) sell or transfer the same, as a whole or in parts or as individual residential units, to any Person or Persons for additional development, individual occupancy or otherwise, and/or (iv) possess, operate and manage the Premises and collect rent from the Company's former subtenants, reserving, however, within the City's reasonable judgment, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, without, in the event of the City taking any action described in (i) and/or (ii) and/or (iii) and/or (iv) above, relieving the Company of any liability under this Lease or otherwise affecting any such liability; and out of any rent and other sums collected or received as a result of such reletting or sale the City shall: (i) first, pay to itself the cost and expense of terminating this Lease; re-entering, retaking, repossessing, completing construction of the Premises and repairing or altering the Premises and/or the Premises, or any parts thereof, and the cost and expense of removing all Persons and property therefrom, including in such costs brokerage commissions, legal expenses and attorney's fees and disbursements, (ii) second, pay to itself the cost and expense sustained in securing any tenant(s) and other occupants and/or purchasers, including in such costs brokerage commissions, legal expenses and reasonable attorney's fees and disbursements and other expenses of preparing the Premises and/or the Premises for reletting or sale, as the case may be, and, if the City shall construct, repair, maintain and/or operate the Premises and/or the Premises,

or any parts thereof, the cost and expense of constructing, repairing, operating and/or maintaining the same, and (iii) third, pay to itself any balance remaining on account of the liability of the Company to the City. Thereafter the City shall pay the balance, if any, to the Leasehold Mortgagee to the extent of the outstanding balance of such Mortgage, and the remainder to the Company. The City in no way shall be responsible or liable for any good faith failure to relet or resell the Premises and/or the Premises, or any parts thereof, or for any good faith failure to collect any rent due on any such reletting or sale, and no such good faith failure to relet or sell or to collect rent shall operate to relieve the Company of any liability under this Lease or to otherwise affect any such liability.

(e) The City may pursue any combination of such remedies and/or any other remedies available at law or in equity.

Section 13.3 Rights of Leasehold Mortgagees.

Notwithstanding the provisions of Section 13.2 above, the City's right to terminate this Lease or utilize other remedies by reason of default on the part of the Company shall be subject to the rights of the Leasehold Mortgagee to receive, prior to any exercise of such right of termination, the City's written notice of such default and to the rights of such Leasehold Mortgagees set forth in Article VII hereof and the written consent thereof by the Leasehold Mortgagee.

Section 13.4 No Remedy Exclusive.

No remedy conferred upon or reserved to the City in this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute.

Subsection 13.4.1. Termination for Cause.

Upon termination of this Lease by the City as a result of an Event of Default, title to the Premises and all of the Improvements shall vest in the City. The Company's remedy for a refund, if any, of the credit upon termination shall be limited to funds available to the City from the Premises and the rights of the Leasehold Mortgagee; provided however, the Company shall not have a lien upon the Premises for the amount of said credit.

Section 13.5 Agreement to Pay Attorneys Fees and

Expenses.

If an Event of Default by the Company occurs under this Lease, or if the Company holds over or continues possession after the termination or expiration of the Term, and the City employs attorneys or incurs other expenses in connection with such Event of Default, or holding over or continuation of possession, then the Company shall pay, the reasonable fees of such attorneys actually incurred by the City and such other reasonable expenses as are actually incurred by the City, to the City on demand.

Section 13.6 Holding Over.

The Company shall surrender possession of the Premises to the City upon the termination or expiration of the Term. The City may thereupon enter upon, reenter, possess and repossess the Premises, dispossess and remove the Company, and have, hold and enjoy the Premises and the right to receive all rental and other income from the Premises, free of any right, title, estate, interest or claim of the Company. If the Company refuses to surrender possession and instead holds over, then the

Company shall be only a tenant at sufferance and not a tenant at will, upon all of the terms and conditions of this Lease, except that the Company shall pay Annual Rent in an amount equal to 150% of the Annual Rent for the immediately preceding Lease Year. There shall be no renewal or extension of this Lease by operation of law.

Section 13.7 The City's Performance of the Company's Obligations.

If the Company has failed to perform an obligation under this Lease and if an Event of Default has resulted from such failure to perform, then in addition to the other rights of the City under this Lease, the City shall, upon reasonable prior notice to the Company and the Leasehold Mortgagee, have the right, but not the obligation, to perform such obligation. Upon receipt of notice demanding same, the Company shall reimburse the City for the reasonable cost, documented to the Company's reasonable satisfaction, of any such performance by the City plus interest thereon at the Default Rate from the date of such notice until the date of repayment by the Company. The amount of such reimbursement shall be deemed Rent.

Section 13.8 Waiver. To the extent not prohibited by law, the Company hereby waives and releases all rights now or hereafter conferred by law or otherwise which would have the effect of limiting or modifying any of the provisions of this Section 13. The Company shall execute, acknowledge and deliver any instruments which the City may request, whether before or after the occurrence of an Event of Default, evidencing such waiver or release.

Section 13.9 Suits by the City. Any suit or suits for the recovery of damages or for a sum equal to any installment or installments of Annual Rent, Additional Rent, or any other sums or charges payable hereunder, or other sums payable by the Company to the City pursuant to this Section 13 may be brought by the City from time to time at the City's election to the extent that such amounts are then due, and nothing herein contained shall be deemed to require the City to await the date whereon this Lease or the Term would have expired or any payment hereunder would have been due had there been no Event of Default by the Company and termination.

Section 13.10 No Waiver by the City. Unless otherwise agreed to by the City and except as otherwise provided by law, no receipt of monies by the City from the Company after the termination of this Lease, or after the giving of any notice of the termination of this Lease shall reinstate, continue or extend the Term or affect any notice theretofore given to the Company, or operate as a waiver of the right of the City to enforce the payment of Annual Rent, Additional Rent, any other sums or charges, and/or damages payable by the Company hereunder or thereafter failing due, or operate as a waiver of the right of the City to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order of judgment for the possession of the Premises, the City may demand, receive and collect any monies due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such monies collected being deemed payments on account of the use and occupation of the Premises, or, at the election of the City, on account of the Company's liability hereunder.

Section 13.11 Waivers by the Company. Except as otherwise expressly provided herein or as prohibited by applicable law, the Company hereby expressly waives the service of any notice of intention to re-enter provided for in any law, or of the institution of legal proceedings to that end, and the Company, for an on behalf of itself and all Persons claiming through or under the Company, also waives any and all right of redemption provided by any Law, or any and all right or to restore the operation of this Lease in case the Company shall be dispossessed by a judgment or by warrant of any court or judge or in case of re-entry or repossession by the City or in case of any expiration or termination of this Lease. the Company reserves its rights to request trial by jury in any action, proceeding or counterclaim brought by the City against the Company on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of the City and the Company, the Company's use or occupancy of the Premises, or any claim of injury or damage. In a summary proceeding to dispossess the Company, the Company shall not interpose any counterclaim of any kind in any action or proceeding commenced by the City to recover possession of the Premises and/or the Improvements. The terms "enter", "re-enter", "entry" or "Re-entry", as used in this Lease are not restricted to their technical legal meaning.

ARTICLE XIV

DEFAULT BY THE CITY

Section 14.1 Events of Default by the City. The occurrence of any of the following events, acts or circumstances shall be and constitute an "Event of Default" by the City:

(a) Failure by the City to pay in full any amount payable to the Company under this Lease when due, and the continuance of such failure for sixty (60) days after the Company gives notice to the City of such failure; or

(b) Failure by the City to observe, perform or comply with any of the other terms, covenants, agreements or conditions contained in this Lease, and the continuance of such failure for sixty (60) days after notice to the City of such failure, or, when the cure reasonably requires more than sixty (60) days, the failure of the City to commence to cure such failure within such 60-day period and thereafter to diligently and continuously prosecute such cure to completion; or

(c) Failure by the City to perform the covenants and agreements set forth in the LDA to be performed by the City after the date hereof, or if any of the City's continuing representations in the LDA, which by the express terms of the LDA specifically survive the closing provided for in the LDA, are or become inaccurate or incomplete in any material respect, and such inaccuracy or incompleteness materially affects the City's, or the Company's ability to perform its obligations or exercises its rights under this Lease, or if the City shall otherwise be in default under the LDA, and any such default shall continue uncured for sixty (60) days after notice thereof is given to the City and shall continue uncured throughout any further or additional periods of notice and opportunity to cure provided for in the LDA, or if such default is capable of being cured but is not curable within such sixty (60) day period, for such longer period of time as

may be necessary to cure any such curable default using due diligence, provided that the City promptly commences and diligently pursues efforts to effect such cure.

(d) A termination of the LDA or any one or more of the documents contemplated thereby, as a result of a default by the City thereunder.

(e) Any representation made in this Lease by the City shall fail in any material way to be accurate and complete and such failure shall continue and not be cured for a period of thirty (30) days after written notice to the City, or, when the cure reasonably requires more than sixty (60) days, the failure of the City to commence to cure such failure within such 60-day period and thereafter to diligently and continuously prosecute such cure to completion.

Section 14.2 Remedies. Whenever any Event of Default by the City shall exist and until it is cured, the Company may, to the extent not prohibited by law, take any and all actions at law or in equity to collect the amount then due or to enforce performance and observance of any obligation, agreement or covenant of the City under this Lease and the LDA, and in connection with either, to recover any or all damages to the Company for the City's violation or breach of this Lease.

Section 14.3 No Remedy Exclusive. No remedy conferred upon or reserved to the Company in this Lease or the LDA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute.

Section 14.4 Intentionally omitted.

Section 14.5 The Company's Performance of the City's Obligations. If the City has failed to perform an obligation under this Lease and if an Event of Default by the City has resulted from such failure to perform, then in addition to the other rights of the Company under this Lease, the Company shall have the right, but not the obligation, to perform such obligation. Upon receipt of notice demanding same, the City shall reimburse the Company for the reasonable cost, documented to the City's reasonable satisfaction, of any such performance by the Company plus interest thereon at the Default Rate from the date of such notice until the date of repayment by the City.

ARTICLE XV

PRIORITY OF LEASEHOLD

Except for the City Mortgage (as defined in Article XII hereof) which is intended to be subordinated to the interests of the Leasehold Mortgagee pursuant to separate agreement, the City shall not subject its fee ownership of the Premises to any mortgage, lien or encumbrance, without prior written notice to the Company and the Leasehold Mortgagee and the written consent of the Leasehold Mortgagee. Nothing set forth in this Lease or in the LDA shall be deemed to require the subordination of the City's fee ownership of the Premises to the lien of any Leasehold Mortgage.

ARTICLE XVI

REPRESENTATIONS

Section 16.1 Representations of the Company. In order to induce the City to enter into this Lease, the Company hereby represents and warrants, with full knowledge that the City shall rely on such representations and warranties, that it has full power and authority to consummate the transactions to which it is a party as contemplated herein, including without limitation, all action for which it is responsible under this Lease; that the Company is not a party to any agreement, not heretofore disclosed to and approved by the City, containing terms or conditions in any way restricting or subjecting to conditions subsequent or precedent, or subjecting to approval, consent or control by any person who or which is not a member or officer of the Company, limiting directly or indirectly the ability of the Company to exercise management discretion and control over the affairs and business of the Company in connection with this Lease, or any matter or transaction related to any of the Lease or the Premises or the redevelopment thereof; and that the Company hereby represents and warrants for itself, the following representations and warranties: (a) the Company is a duly formed and validly existing, duly qualified to do business in the State of New York; (b) _____ and _____ are the only Managers of the Company, and they, or either of them, exercise(s) effective, day-to-day control and management over the Company and over all activities for which the Company is responsible under this Lease; (c) neither the Company, nor any person or entity having an ownership interest in the Company, nor any Manager of the Company, is a party to any agreement (including without limitation any Operating Agreement of the Company), not heretofore disclosed to and approved by the City, containing terms or conditions in any way restricting or subjecting to conditions subsequent or precedent, or subjecting to approval, consent or control by any person who or which is not a Manager (including without limitation any creditor of or investor in the Company or any of its Managers), limiting directly or indirectly the ability of the above-named Managers of the Company to exercise management discretion and control over the affairs and business of the Company in connection with this Lease, the Financing Documents, the Construction Contracts, or any matter or transaction related to any of the foregoing or agreements or documents or to the performance or implementation thereof; (d) this Lease has been duly authorized by all necessary action on the part of the Company and have been duly exercised and delivered by the Company; (e) neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained and the Governmental Approvals; (2) contravenes any existing law, judgment, governmental rule, regulation or other applicable to or binding on the Company (except, and to the extent, that any of the same are to be modified through Governmental Approvals as herein contemplated), or (3) contravenes or results in any breach of or, except as contemplated by this Lease, results in the creation of any lien or encumbrance upon any property of the Company under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or any other agreement or instrument to which the Company is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the Company outstanding on the date hereof; and (f) this Lease constitute a legal, valid and binding obligation of the Company enforceable against the Company in accordance with the terms thereof.

Section 16.2 Representations of the City. In order to induce the Company to enter into this Lease, the City hereby represents and warrants, with full knowledge that the Company shall rely on such representations and warranties, that (a) the City has full power and authority to consummate the transactions contemplated hereby; (b) this Lease has been duly authorized by all necessary action on the part of the City and has been duly executed and delivered by the City, neither the execution and deliver thereof, nor compliance with the terms and provisions thereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or such as are Governmental Approvals to be obtained; (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City (except, and to the extent, that any of the same are to be modified through Governmental Approvals as contemplated herein), or (3) contravenes or results in any breach of or, except as contemplated by this Lease, results in the creation of any lien or encumbrance upon any property of the City under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Lease, any other Lease or instrument to which the City is a party, specifically including any covenants of any bonds, notes or other forms of indebtedness of the City outstanding on the date hereof; and (c) this Lease constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with the terms thereof.

Section 16.3 Opinions of Counsel. Concurrently with the execution of this Lease, the Company and the City shall each deliver an opinion of counsel to the other in form reasonably satisfactory to such party with respect to such party's representations set forth above.

Section 16.4 No Other Representations. Each of the parties to this Lease acknowledges to the other that, except as otherwise specifically provided herein, (a) no representations, statement or warranties, express or implied, have been made by, or on behalf of, any such party with respect to such party or with respect to the Premises, or with respect to the transactions contemplated by this Lease, and (b) it has not relied on such representations, statements or warranties.

ARTICLE XVII

ARBITRATION

Section 17.1 Settlement by Arbitration. In such cases where this lease expressly provides for the settlement of a dispute or question by arbitration, and in only such cases, the same shall be finally determined by arbitration conducted in accordance with this Article XVII.

(a) The party desiring arbitration shall pursuant to the provisions of Article XVII give notice (the "Demand for Arbitration" or "Demand") to that effect to the other party and shall set forth in such demand (i) the specific dispute and issues and questions which such party desires be resolved, (ii) the facts relevant to each dispute, issue and question, (iii) the specific portions and

language of this Lease providing for arbitration of such dispute, issue or question, (iv) identification of the specific provision(s) of this Lease relevant to each dispute, issue and question as well as specific reference to any relevant contract, construction or other document(s) and portion(s) thereof. The initial Demand shall also designate and appoint a person as arbitrator on such initiating party's behalf giving such arbitrator's name, address, business affiliations and whether or not such person has or has previously had any business or personal dealings, connections, transactions or affiliations with either party and the time and exact nature of such relationship. Within three (3) business days for the day of receipt of the Demand, the responding party, by notice to the initiating party, shall designate and appoint a second person as arbitrator on its behalf and furnish in such notice the same information above required about the first arbitrator. The two arbitrators thus appointed shall, within three (3) business days after the date of appointment of the second arbitrator, by notice to each party appoint a third person as arbitrator giving the same information above required about the first arbitrator as well as whether or not either of the first two arbitrators has or has previously had any business or personal dealings, connections, transactions or affiliations with either appointing arbitrators, and the time and exact nature of such relationship.

(b) If the second arbitrator shall not have been appointed as aforesaid, the first arbitrator shall proceed to determine such matter and shall be the sole arbitrator and shall conduct the arbitration and render his sole decision as is hereinafter prescribed for the three-arbitrator situation except that (s)he shall act alone; and

(c) If the two arbitrators appointed by the parties shall be unable within the aforesaid three (3) business day period, to agree upon the appointment of a third arbitrator then, and in such event, the two arbitrators, or the parties, shall in writing immediately notify by personal delivery the American Arbitration Association ("AAA") in New York County, State of New York (or any successor organization thereto) and request that the AAA appoint a third person as the third arbitrator (without submission of a list of the parties) within three (3) business days of receipt of the notice and give written notice thereof within such time period to the parties and to the other two arbitrators. The AAA or the third arbitrator shall simultaneously furnish the same information about the third arbitrator as was required above with respect to the relationship, etc. of said arbitrator to the parties and to the arbitrators appointed by the parties. The appointment of a third arbitrator by the AAA shall be on an expedited basis and shall be made within such three (3) day period, despite any AAA rules to the contrary notwithstanding.

(d) Within ten (10) business days after the service or giving of the Demand for Arbitration, the party receiving such Demand shall serve an Answer to the Demand, setting forth, inter alia, the (i) specific detailed position of the responding party as to each of the questions, issues and facts set forth in the Demand, (ii) the facts relevant to each dispute, issue and question, and (iii) the specific provisions of this Lease relevant to each dispute, issue and question as well as specific reference to any relevant contract, construction or other documents(s).

(e) The three arbitrators appointed (or the single arbitrator pursuant to Paragraph (b) above) shall thereupon (i) commence and conduct the arbitration hearing as promptly as possible and in no event later than twenty (20) days after the service of the Demand for Arbitration, (ii) determine the issues in accordance with the terms and provisions of this Lease, and (iii) said

hearing, shall it be necessary to be continued shall be conducted on successive and continuous days exclusive of Sunday and Federal holidays, until the taking of testimony and evidence is completed and the hearing is closed by the arbitrators.

Section 17.2 Governing Rules. Any Arbitration hearing under this Article XVII shall be conducted in accordance with the expedited procedures contained in and in accordance with the Construction Industry Rules of the AAA then governing arbitrations in construction matters, where such procedures and rules are not in conflict with and do not nullify or render ineffective the specific provisions and terms of this Article XVII. In the event of any conflict, purported nullification or potential ineffectiveness or ambiguity the provisions of this agreement shall control and supersede any such AAA rules or procedures. In the absence, refusal, failure or inability of the AAA to act as above provided, either party may apply to the Supreme Court of the State of New York, County of New York at Special Term Part II for a court appointment of such arbitrator, on an expedited basis, by order to show cause on two business days' notice which application shall request only the appointment by the court of a third arbitrator.

Section 17.3 Arbitrator's Decision. The arbitrators must render a written decision no later than ten (10) days after the close of the hearing. Where three arbitrators participate, any decision in which any two or more of the arbitrators concur shall be final and binding.

(a) The arbitrators shall render their decision and award in conformity with this Lease and this Article XVII and the related documents, including but not limited to the LDA, the Construction Plans, the Urban Renewal Plan and the Preliminary Development Plan, and the arbitrators shall not have the power or authority to amend, modify, invalidate, waive, ignore or change any of the same in whole or in part.

(b) The hearing's close shall not be extended or adjourned for the purpose of submission of any briefs. Briefs, if any shall not be received by the arbitrators) unless they are personally served upon the parties legal representatives and delivered personally to the arbitrator prior to the close of the hearing.

(c) One reply brief may be submitted on behalf of each respective party provided it is served personally and delivered personally to the arbitrator no later than the close of business two business days after the day the hearing is closed.

(d) Such decision and award shall be in writing and shall be final, conclusive, and binding upon the parties, and counterpart copies thereof shall be personally delivered to each of the attorneys or legal representatives of the parties. Judgment may be entered on the decision and award of the arbitrators) so rendered upon such notice as is required by the laws of the State of New York in any court of record having jurisdiction, and may be enforced in accordance with the laws of the State of New York.

Section 17.4 Fees and Expenses. Each party shall pay the fees and expenses of the arbitrator directly designated and appointed by such party and the

fees and expenses of the third arbitrator and all other expenses of the arbitration (other than the fees and disbursements of attorneys or witnesses for each party) shall be borne equally by the parties.

Section 17.5 No Revocation. The City and the Company shall waive any and all rights they or any of them may at any time have to revoke their agreement to submit to arbitration and to abide by the decision rendered thereunder, except as provided under the Civil Practice Law and Rules of the State of New York.

ARTICLE XVIII

TITLE TO IMPROVEMENTS; SURRENDER

Section 18.1 Title to Improvements. Title to the Improvements and any alteration, changes or additions thereto, shall be and remain in the Company during the Term of this Lease. During the Term of this Lease, the Company shall be entitled, for all taxation purposes, to claim depreciation and tax credits and deductions on the Improvements included in the Company's Leasehold Estate hereunder.

Section 18.2 Upon Purchase. If the Company purchases the Premises as a result of its exercise of the Option, then title to the Premises shall be in the Company after such purchase.

Section 18.3 Upon Termination or Expiration. Upon the termination or expiration of this Lease, title to the Premises (but not furnishings, inventories and other such items of personal property purchased or provided by the Company (or its subtenant(s) which shall remain the property of the Company or its subtenant(s)), shall be deemed to be and become part of the Premises and the sole and absolute property of the City as of the expiration or termination of the Lease and shall be surrendered to the City at that time, free and clear of the liens of mortgages, deeds of trust, liens of mechanics, laborers or materialmen and all other liens and encumbrances other than any such liens and encumbrances incurred by or agreed to by the City.

Subsection 18.3.1. Surrender at End of Term. On the last day of the Term or upon any earlier termination of this Lease for any reason (other than the purchase by the Company of the Premises), or upon re-entry by the City pursuant to the provisions of this Lease, the Company shall well and truly surrender and deliver up to the City (a) the Premises, without any payment or allowance whatever by the City, in good order, condition and repair, reasonable wear and tear excepted, free and clear of the Leasehold Mortgage and all lettings, occupancies, liens and encumbrances other than the Permitted Title Exceptions and such other liens and encumbrances as shall have been created by the City or to which the City shall have expressly consented in writing, and (b) the balance of any Subtenant deposits. The Company hereby waives any notice now or hereafter required by law with respect to vacating the Premises and/or any parts thereof on any such termination date.

Subsection 18.3.2. Assignments to the City. On the last day of the Term or upon any earlier termination of this Lease or upon re-entry by the City pursuant to the provisions of this Lease, the Company shall assign to the City all of its right, title and interest in, and deliver to the City, executed counterparts of all assignable Construction Contracts, any other assignable agreements with architects, managers and other professionals providing services in connection with the construction of the Premises, any assignable service and maintenance contracts then affecting the Premises, the Premises and/or any parts thereof, true and complete maintenance records for the Premises, the Improvements, the Equipment and/or any parts thereof, all original Permits then pertaining to the Premises and/or any parts thereof, including, without limitation, any permanent or temporary Certificates of Occupancy then in effect for the Premises, payment and performance bonds, all warranties and guarantees then in effect which the Company has received in connection with any work or services performed or building materials and Equipment purchased for and/or installed in the Premises, all financial reports, books and records which are reasonably requested by the City, and any and all other documents of every kind and nature reasonably relating to the continued development or operation of the Premises.

Subsection 18.3.3. Written Confirmation. The Company shall, upon demand, execute, acknowledge and deliver to the City a written instrument in recordable form confirming the date of expiration or termination of this Lease, as well as any reasonable assurance of title to the Premises that the City may request, together with instruments in recordable form evidencing the cancellation or expiration of any memorandum of this Lease and/or any other recorded documents executed by and between the City and the Company applicable hereto.

Subsection 18.3.4. Personal Property. Any personal property owned by the Company which shall remain on the Premises shall, after termination of this Lease and the removal of the Company from the Premises, become a part of the Improvements and be deemed to have been abandoned by the Company, and may be retained by the City as its property or be disposed of without accountability in any manner as the City may see fit. The City shall not be responsible for any loss or damage occurring to any such property.

Subsection 18.3.5. Survival. The provisions of this Article XVIII shall survive the expiration or earlier termination of this Lease.

ARTICLE XIX

LIMITATION OF LIABILITY

Section 19.1 Liability of the City. Notwithstanding anything to the contrary set forth in this Lease, the Company agrees that the obligations of the City under or with respect to any of the terms, covenants and conditions of this Lease and any agreement or instrument to be executed pursuant to this Lease shall not constitute personal obligations of the City, or their respective members, elected or appointed officials, officers, employees, agents or representatives or members of the City Council or of the members of any board, council, commission, office, agency or consultant of the City, and shall not create or involve any claim against, or personal liability on the part of, them or any of them, and the

Company and all persons claiming by or under the Company will look solely to the City's interest in the Premises for the enforcement of any remedy or the satisfaction of any obligation or liability of the City and will not enforce any remedy or execute or collect any judgment out of or against any other assets or properties of the City. For the purposes of this Section, the terms "the City" shall be deemed to include the _____ [insert agent for the City], herein defined as _____ [insert initials of agent].

Section 19.2 Intentionally omitted.

Section 19.3 Survival. The provisions of this Article XIX shall survive the expiration or sooner termination of this Lease.

ARTICLE XX

INDEMNIFICATION

Section 20.1 Indemnification of the City and Others.

The Company shall not do or permit any act or thing to be done upon the Premises which may subject the City to any liability or responsibility for injury, damage to persons or property, or to any liability by reason of any violation of law, and shall exercise such control over the Premises as may be necessary or advisable so as to fully protect the City against any such liability. The Company agrees, that the Company shall, to the fullest extent permitted by law, except where the events directly giving rise to claims for indemnification shall have resulted from the acts or omissions of the "Indemnitees" (as hereinafter defined), indemnify and save harmless (a) the City and its members, agents, officials, officers, employees, representatives, and (b) the City and members of the City Council of the City, and the City's agents, officials, officers, employees, representatives (all of the foregoing, in the preceding clauses (a) and (b), being herein referred to collectively as the "Indemnitees"), from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, engineers', architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term:

(a) Construction of the Improvements or any other work or thing done in, on or about the Premises or any parts thereof;

(b) Any use, non-use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises, or any parts thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto;

(c) Any act or failure to act on the part of the Company or its agents, contractors, servants, employees, licensees or invitees;

(d) Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on or about the Premises or any parts thereof or in, on or about any street, alley, sidewalk, curb, vault, passageway, or space comprising a part thereof adjacent thereto;

(e) Any failure on the part of the Company to comply with all laws or to pay the Rent, the Additional Rent or any other sums and/or charges due and payable hereunder or to perform or comply with all the covenants, agreements terms and conditions contained in this Lease on its part to be performed or complied with (including, without limitation, the Company's obligations under Article IV hereof);

(f) Any lien or claim which may be alleged to have arisen against or on the Premises or any parts thereof or any lien or claim created or permitted to be created by the Company against any assets of, or funds appropriated to, any of the Indemnitees under any laws which may be asserted against any of the Indemnitees with respect thereto;

(g) Any failure of the Company to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Financing Documents or other contracts and agreements affecting the Premises on the Company's part to be kept, observed or performed by the Company;

(h) Except as otherwise set forth in this Lease or the LDA or related documents, any tax, levy or charge attributable to the execution, delivery or recording of this Lease or any memorandum hereof, or the conveyance of the Premises or interests therein to the Company as hereinafter provided;

(i) Any contest permitted pursuant to the provisions of Article VI hereof; and

(j) Any claim for brokerage commissions, fees or other compensation by any Person who shall allege to have acted or dealt with the Company in connection with any of the transactions contemplated hereby.

Section 20.2 Not Affected by Status of Insurance. The obligations of the Company under this Paragraph 20 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises or any parts thereof.

Section 20.3 Defense of Claims. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.1, then, upon demand by the City, the Company, without cost or expense to the City or any of the other Indemnitees, shall resist or defend such claim, action or proceeding in such Indemnitee's name, if necessary, with attorneys for the Company's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise with such attorneys as the City shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the City and any of the other Indemnities may engage their own attorneys at the Company's expense, to defend it or to assist in its defense if the City shall reasonably determine that the attorneys selected by the Company cannot represent both the City and the Company in connection with the defense of any such claim, action, or proceeding. In such event, the City agrees that it will not settle or compromise any such claim, action or proceeding without the approval of the Company, which approval shall not be unreasonably withheld or delayed.

Section 20.4 Survival. The provisions of this Article XX shall survive the expiration of this Lease or date of sooner termination of this Lease.

ARTICLE XXI

RIGHTS OF THE CITY

Notwithstanding anything to the contrary contained herein, the Company hereby agrees that the Premises are demised to the Company subject to all rights of the City, including, without limitation, rights of access, granted by law as against privately owned or privately occupied property within the municipal boundaries of the City for the enforcement of all duties and obligations pursuant to its Charter and Code as a municipal corporation of the State of New York to preserve, protect and promote the general welfare, health and safety, and nothing contained in this Lease is intended or is to be interpreted as reducing, limiting, increasing, or otherwise affecting the City's rights, duties and/or obligations in such regard.

ARTICLE XXII

MISCELLANEOUS GENERAL PROVISIONS

Section 22.1 Rules of Interpretation.

(a) Applicable Law. This Lease shall be governed by and interpreted and construed under the laws of the State of New York.

(b) References: Headings. Unless expressly provided otherwise in this Lease, each reference in this Lease to a particular Article, Section, subsection, paragraph or clause shall be to such Article, Section, subsection, paragraph or clause of this Lease. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed, a limitation on the scope of the particular Articles, Sections or subsections to which they refer.

(c) "Including". In this Lease, whenever general words or terms are followed by the word "including" (or another form of the word "include") and words of particular and specific meaning, the general words shall be construed in their widest extent to mean "including, without limitation", and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

(d) No Construction Against Drafting Party. No provision of this Lease shall be construed against or interpreted to the disadvantage of either the City, or the Company by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, structured or dictated such provision.

(e) Exhibits. Each exhibit referred to in this Lease is attached to and incorporated by reference in this Lease.

Section 22.2 Negation of Partnership. Nothing in this Lease shall be construed to render or constitute the City in any way or for any purpose a partner, joint venturer or associate in any relationship with the Company, nor shall this Lease be construed to authorize either party to act as agent for the other party except as expressly provided in this Lease.

Section 22.3 Notices. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or reputable courier (including Federal Express and other such services) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below:

If to the City:

Corporation Counsel
City of Yonkers
City Hall
Yonkers, New York 10701

If to Leasehold Mortgagee:

Attention:

If to the Company:

With a copy to:

Any notice, request, or other communication shall be considered given on the date of such hand or courier delivery or deposit in the United States mail, and shall be considered given on the date of hand or courier delivery or on the third (3rd) day following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) days' prior written notice, either party may from time to time and at any time change its mailing address for purposes of this Lease. Any notice, request or other communication required or permitted to be given by any party may be given by such party's legal counsel.

Section 22.4 Fees and Commissions. The City and the Company represent and warrant, each to the other, that they have not discussed this Lease or its subject matter with any real estate broker, agent or salesman so as to create any legal right in

any-such broker, agent or salesman to claim a real estate commission or similar fee with respect to the transactions contemplated by this Lease. The City and the Company indemnify each other against and agree to hold each other harmless from any and all claims (including court costs and attorneys' fees incurred in connection with any such claims) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to any of the transactions contemplated by this Lease.

Section 22.5 Waiver. The failure of either the City or the Company to insist upon strict performance of any of the terms or provisions of this Lease or to exercise any option, right or remedy contained in this Lease, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either the City or the Company of any term or provision of this Lease shall be deemed to have been made unless expressed in writing and signed by such party.

Section 22.6 Estoppel Certificates. Each party shall, without charge, at any time and from time to time, within twenty (20) days after request by the other party or Leasehold Mortgagee, certify, to any person identified by the requesting party, by written instrument, duly executed, acknowledged and delivered, to the effect that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which the Rent and other charges, if any, have been paid, the date of expiration of the Term, the Rent then payable under this Lease, and stating whether or not any notice of default has been given to the other party which has not been cured and, whether or not, to the best knowledge of the Person executing such estoppel certificate on behalf of such party, the other party is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the Person executing such estoppel certificate may have knowledge.

Section 22.7 Amendments. This Lease and its provisions may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought and by the Leasehold Mortgagee.

Section 22.8 Severability. If any provision of this Lease or the application of any provision to any Person or circumstance is or becomes invalid or unenforceable to any extent, then the remainder of this Lease and the application of such provisions to any other any other Person or circumstances shall not be affected by such invalidity or unenforceability and shall be enforced to the greatest extent permitted by law.

Section 22.9 Memorandum. Promptly upon request from the Company or the City or Leasehold Mortgagee, the other parties hereto shall execute a memorandum of lease setting forth the principal terms of this Lease, and otherwise in form and content reasonably acceptable to both parties, which the requesting party may record at its expense in the Westchester County Clerk's Office, Land Records Division, and in such other location as may from time to time be provided by law as the proper place for recordation of a memorandum of this Lease.

Section 22.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

Section 22.11 Binding Effect. Subject to any restrictions on transfer contained in this Lease, this Lease shall inure to the benefit of and be binding on the City and the Company, as acknowledged herein, and their respective legal representatives, successors and assigns.

Section 22.12 Joint and Several. If the Company at any time consists of more than one Person, then the obligations of all such Persons constituting the Company under this Lease shall be joint and several. The foregoing shall not be deemed to impose liability on any stockholder, limited partner or passive investor of any entity which constitutes the Company.

Section 22.13 No Merger of Estates. The City, and the Company intend that this Lease continue in effect and not be terminated or otherwise affected by the doctrine of merger of estates upon the ownership by the same Person of both the reversion and the Leasehold Estate under this Lease, unless the City, the Company and the Leasehold Mortgagee agree in writing to such merger and the merger agreement is recorded.

Section 22.14 Date for Performance. If the time, period or date by which any right, option, election, act or notice provided under this Lease must be exercised, performed or given, expires or occurs on a Saturday, Sunday or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

Section 22.15 Omitted.

Section 22.16 Relation to LDA. Except as expressly modified by this Lease, the provisions of the LDA shall remain in full force and effect.

Section 22.17 Gender, Etc. As used in this Lease, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

Section 22.18 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Lease shall be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 22.19 Successors and Assigns. The agreements, terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the City and the Company and, except as otherwise provided herein, their respective successors and permitted assigns.

Section 22.20 Further Assurances. Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Lease.

Section 22.21 Separability. Unenforceability for any reason of any provision of this Lease shall not limit or impair the operation or validity of any other provision of this Lease and if any term or provision of this Lease or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Lease shall be valid and enforced to the extent permitted by law.

Section 22.22 Entire Agreement. This Lease, together with the exhibits hereto and the LDA, contains all of the promises, agreements, conditions, inducements and understandings between the City and the Company concerning the matters addressed in this Lease, and there are no promises, agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

Section 22.23 Effectiveness. This Lease shall not be binding or effective until executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement of Lease as of the day and year first above written.

CITY OF YONKERS

By: _____
Name: Mike Spano
Title: Mayor

[Insert name of Company]

By: _____
Name:
Title:

Acknowledgments

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, 201_, before me, the undersigned, a Notary Public in and for said State, personally appeared Mike Spano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, 201_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

Notary Public

SCHEDULE A

Real Property Description

Exhibit A
Permitted Title Exceptions

Exhibit B
Intentionally Omitted

Exhibit C
Construction Plans

Exhibit D
Form of First Amendment to Lease

THIS FIRST AMENDMENT to the Lease Agreement between the **City of Yonkers** (“City”), as lessor, and _____ (“Company”), as lessee, dated as of _____, 201_ (the “City Lease”) is entered into as of the _____ day of _____ by and between the City and the Company.

RECITALS:

WHEREAS, Article III of the Lease provides that the Company shall make Annual Rent payments to the City during the term of the City Lease; and

WHEREAS, the Company has Substantially Completed the Improvements and has exercised its option to purchase the property under the Land Disposition Agreement between the City and the Company dated as of _____, 200_ (the “LDA”) and as set forth in the City Lease; and

WHEREAS, the City conveyed its fee title to the Premises to the Company subject to the Leasehold Mortgage(s); and

WHEREAS, the Leasehold Mortgagee(s) have requested that the City Lease be amended to reflect that no further Annual Rent payments under the Lease are due and owing and to make certain other changes under the City Lease,

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, and the Company agree that the City Lease is hereby amended as follows:

1. Terms not defined in this First Amendment shall be as defined in the City Lease.
2. Article III of the City Lease is hereby deleted in its entirety.

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment of Lease as of the day and year first above written.

CITY OF YONKERS

By:
Name:
Title:

[Insert name of Company]

By:

By: _____

Name:

Title: